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INTERSTATE COMMERCE IN CONVICT-MADE GOODS

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

SIXTY-SECOND CONGRESS, SECOND SESSION

ON

H. R. 5601

AN ACT TO LIMIT THE EFFECT OF THE REGULATION OF INTERSTATE COMMERCE BETWEEN THE STATES IN GOODS, WARES, AND MERCHANDISE WHOLLY OR IN PART MANUFACTURED BY CONVICT LABOR OR IN ANY PRISON OR REFORMATORY

PRESENTED BY MR. BRANDEGEE

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INTERSTATE COMMERCE IN CONVICT-MADE GOODS.

WEDNESDAY, JULY 3, 1912.

SUBCOMMITTEE OF THE COMMITTEE ON JUDICIARY,
UNITED STATES SENATE,
Washington, D. C.

The subcommittee having under consideration H. R. 5601 met at 11 o'clock a. m. and proceeded to hear the argument and statement of Mr. Thomas S. Allen, of Lincoln, Nebr.

Present: Senators Brown (chairman) and Brandegee.

The bill is as follows:

[H. R. 5601, Sixty-second Congress, second session.]

AN ACT To limit the effect of the regulation of interstate commerce between the States in goods, wares, and merchandise wholly or in part manufactured by convict labor or in any prison or reformatory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convict labor, or in any prison or reformatory, transported into any State or Territory, or remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in such State or Territory, be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise.

The CHAIRMAN. Kindly state your business.

Mr. ALLEN. I am an attorney at law.

The CHAIRMAN. If you will state your views with reference to this bill, the committee will be very much obliged to you.

Mr. ALLEN. I want to briefly state my views on the pending bill. It is the theory of those who are opposed to the bill that it is unconstitutional, and for that reason ought not to pass, but before discussing that phase of the question I want to say that if it should become a law it would be a great hardship upon all the States that now have what is known as the contract system in the penitentiaries. I live in Nebraska and I voice the sentiment of the board of public lands and buildings of our State that has control of the penitentiary when I say that if this bill should be enacted into law it would greatly embarrass our State in a financial way, for the reason that it would deprive all of the prisoners now employed in our State penitentiary of their present employment, the State would lose about $160,000 in cash each biennial period, as that is the amount of money which the State is now receiving from that part of its convict labor which is working the different shops in the State penitentiary. If this bill becomes a law the present employment of these men will necessarily have to be withdrawn, and it will possibly necessitate a special session of the legislature to provide some kind of employment for

the prisoners. In our State we have no way of working convicts, except under the contract system; it would be impracticable to put them out upon the farms as only a few can be worked that way in the summer months and in the winter months this would be absolutely impossible. A few men might be worked on the roads, but owing to the recent trouble which we have had in our State penitentiary, no farmer would want a gang of prisoners working in front of his farm, and this is an objection, so far as we are concerned, which is a very serious one.

The CHAIRMAN. Let me ask you how are the prisoners employed now?

Mr. ALLEN. They are employed under a contract made by the board of public lands and buildings to make brooms. The State gets 65 cents a day for their services.

The CHAIRMAN. Who is the second party to that contract?

Mr. ALLEN. The Lee Broom & Duster Co.

The CHAIRMAN. Do they sell their product of brooms in the State?

Mr. ALLEN. They sell their products all over the country, but largely in the States of New York and Illinois.

The CHAIRMAN. Do they sell any of the products in the State of Nebraska that you know of?

Mr. ALLEN. I am not sure about that.

The CHAIRMAN. The State of Nebraska has no law against the sale of convict-made goods?

Mr. ALLEN. No; but a very small portion of their goods is sold in Nebraska, as there is no market there. The chief market they have is in the State of New York, where there is no law prohibiting the sale of this kind of goods, and this act now pending before Congress is designed to destroy that market for goods manufactured in the Nebraska penitentiary.

The CHAIRMAN. Is it your judgment under this bill, if enacted into law, the sale of brooms manufactured in the Nebraska penitentiary would be unlawful in the State of New York?

Mr. ALLEN. Yes, sir; that is, if the act should be held constitutional.

The CHAIRMAN. The 65 cents a day which Nebraska receives from the broom company for a day's labor is paid into the State treasury?

Mr. ALLEN. Yes, sir.

The CHAIRMAN. The penitentiary expenses are met by an appropriation from the legislature?

Mr. ALLEN. Yes, sir.

The CHAIRMAN. Have you any figures or data that show what the ratio is between the amount earned under this contract by the convicts and paid into the State treasury and the amount appropriated by the legislature to support the penitentiary?

Mr. ALLEN. No; I do not have those figures, but the amount of money which the convicts earn and which is turned into the State treasury is a very large item in maintaining the expenses of the State prison, and the income under this contract almost pays the entire expenses of the penitentiary.

So far as working convicts upon the roads in Nebraska is concerned, we have no stone, such as is found in Colorado and the intermountain States, where it might be easy to work a gang of men together. In Nebraska if they were worked upon the roads they would have to be

scattered considerably, and I know from public sentiment in our State that this would not be tolerated. So we are face to face with a situation of either keeping the convicts employed as they now are under the contract system or locking them up in their cells with nothing to do.

The CHAIRMAN. What effect, in your judgment, would enforced confinement have on the health and mind of the convict?

Mr. ALLEN. I think it would ruin the health and mind of the convict in the course of time. It has been demonstrated by prison reform associations where a convict is kept constantly locked in his cell that in the course of a very short time he begins to lapse mentally and to fail physically, and I am sure that such treatment of prisoners would be very injurious to the health of the convicts.

The CHAIRMAN. Can you give approximately the number of convicts, the average, for the last three or four years in the penitentiary in Nebraska?

Mr. ALLEN. About 475.

The CHAIRMAN. Is there anything else you wish to state?

Mr. ALLEN. I want to discuss briefly the constitutional phases of this bill. Our contention is that the proposed legislation is unconstitutional because it is an attempt to deprive citizens of the United States engaged in dealing with convict-made goods of the liberty and property rights guaranteed them by the Constitution, and it is further an interference with the free right of contract.

The CHAIRMAN. As I understand it, your constitutional objections are two: First, it transgresses the interstate commerce clause of the Constitution, and, secondly, it impairs the freedom of contract in articles of commerce.

Mr. ALLEN. Yes, sir; and also interferes with competition. As I understand it, Congress can only legislate concerning those things which affect the public health, the public safety, and the public morals. There has been some legislation along this line in the past. In 1890 there was a bill passed by Congress known as the Wilson bill, the purpose of which was to regulate the sale of liquor, but the regulation of liquor traffic is a proposition that is altogether different from the one here, because it is generally admitted that that is a question that comes under the police power.

That law, in the case of In re Rahrer (140 U. S., 545), was sustained by the Supreme Court upon the ground that the United States could yield to the separate States the power to enact police laws over goods in interstate commerce which by their nature are subject to police power, very much as the State legislature can pass local option laws turning over the question of prohibition to local districts. This case was decided on the further ground that Congress could rightfully determine when goods in transit ceased to be interstate commerce. In other words, the Wilson bill gave the States the right to pass local police regulations over a subject which was admittedly within the police power of the State, and that is the distinction between that case and the bill now pending. We contend that the subject matter that this bill pertains to is not within the police power of the State. I think there has been no legislation of Congress pertaining to other articles of trade or commerce, except liquor. There have been several attempts to pass bills similar to the one now pending. On December 3, 1907, there was a bill introduced by Mr. Kimball known

as H. R. 4064, and on December 5, 1907, H. R. 4483, introduced by Representative Slayden. Both of these bills were similar to the one now before your committee, but neither of them became a law, and both were disposed of in committees on the ground that they were unconstitutional.

The first real objection to this bill, as I understand it, is that it gives the States authority over interstate commerce. It must be admitted by everyone that if a particular class of goods—that is, I mean penitentiary-made goods—now under consideration is not within the police laws of the States Congress can not properly pass the present legislation. To do so is to attempt to give permission to the States to regulate a thing over which they have no jurisdiction. In other words, can it be said that Congress can constitutionally pass a law, the necessary effect of which is to attempt to permit the State to deprive citizens of their property without due process of law? To do so would be for Congress to become a party to an illegal proceeding, and as the congressional legislation would be part of an attempt to deprive citizens of their constitutional rights, it would, in my judgment, be clearly unconstitutional and void. Such a result can not be contemplated nor will it be consistently urged, do I believe, by any advocate of this bill. The question, then, is whether convict-made goods in general can not be regulated by any State under the exercise of its police power. By this I mean goods made by convicts in other States as distinct from the production of goods by a State itself, for it is admitted that every State can regulate the labor of its own prisoners and the productions of its penitentiaries, as it sees fit. The objection then to these goods which will bring them within the police power is this: There is no attempt made to show that convict-made goods are not merchantable and are not honestly made and are not in every respect equal to goods made outside of penitentiaries. It must be admitted that convict-made goods are generally as good in material and workmanship as are goods manufactured outside of penitentiaries; in fact, there is no sweatshop method employed in the penitentiary in Nebraska, and I think now most penitentiaries have their shops so regulated that the best ventilation possible is obtainable and there is nothing unhealthy or dishonest about convict-made goods, and they are exactly similar, in every respect, to goods made by free labor, both in appearance, quality, healthfulness, and workmanship.

The chief reason urged by the advocates of this bill for its passage is that penitentiary-made goods are made by cheap labor which the State controls at prices below that of the workmen employed outside of the penitentiary. This is really the only objection to penitentiary-made goods. It is claimed that because those goods are manufactured by men who give but 65 cents a day for the services of the convicts that the contractor has an advantage in the markets of the country with other manufacturers who have to pay higher wages, and that it is also detrimental to the interests of labor, because these goods, in competition with goods made by free labor, must necessarily reduce the price and in that way reduce the wage which the manufacturer pays the laborer. However, it occurs to me that there is very little in this argument because if these men, by the passage of this act, should be prohibited from engaging in manufacturing occupations, they would necessarily have to be employed at some-

thing, and no matter what their occupation is, they would be competing with somebody. For instance, in the State of Texas, I understand, a large number of the prisoners are engaged in truck gardening, raising onions, and a prisoner raising onions is competing with the onion grower just as much as a prisoner making brooms is competing with the manufacturer of brooms, so it seems to me that this argument has very little effect.

The CHAIRMAN. Have you any data showing the per cent of convict-manufactured goods?

Mr. ALLEN. I can not give the exact data, but it is so small it is infinitesimal.

The CHAIRMAN. Your contention is, admitting that at present prison labor comes in competition with free labor on the outside, the product produced is so small in comparison to the total product produced in the United States it becomes negligible as a product of free labor?

Mr. ALLEN. Yes, sir.

I have already stated that the police power of the State extends to regulations relating to health, morals, and the general peace of the community. It is sometimes further extended to include laws to promote the general welfare.

The CHAIRMAN. Have not the courts sustained the police power of States exercised in behalf of general welfare?

Mr. ALLEN. Yes, sir; in some instances. The term "general welfare," I think, is generally understood, as interpreted by the courts, to mean the welfare of the State as regards only the general preservation of the peace or the prevention of fraud and oppression. Congress can not enact laws concerning the production or sale of goods in general, even if they may be deemed beneficial by the best economic authorities, if they do not, as a matter of fact, serve to protect the public health or morals, or prevent crime, fraud, or oppression. There have been a number of laws passed to restrict competition and they have universally been held to be unconstitutional.

I want to call your attention to several cases:

Allgeyer *v.* Louisiana, 165 U. S., 578.
Yick Wo *v.* Hopkins, 118 U. S., 56.
State *v.* Goodwill, 33 W. Va., 179.
Ex parte Whitell, 98 Cal., 73.
People *v.* Hawkins, 157 N. Y., 1.
Helena *v.* Dwyer, 64 Ark., 424.
Republic Iron Co. *v.* State, 160 Ind., 379.
People *v.* Marx, 99 N. Y., 377.
State *v.* Dalton, 22 R. I., 77.
People *v.* Gillson, 109 N. Y., 389.

From these decisions you will see that it follows that all legislative attempts to limit competition are unconstitutional and that this is correct, will appear from an analysis of the cases which I have cited. Competition is often ruinous in its effects. The most severe modern example of this I think, is the department stores, and in recent years there have been much objection and many attempts to legislate against them. The legislatures have attempted to save the small storekeepers from the effects of such competition, but such legislation has always been held unconstitutional.

Wyatt *v.* Ashbrook, 154 Mo., 375.
Chicago *v.* Netcher, 183 Ill., 104.

Justice Cartwright, in the case last cited, in holding an ordinance against department stores unconstitutional, used the following language:

> The ordinance is also an attempted interference by the city with rights guaranteed to the defendant by the Constitutions of the United States and of this State. The questions involved are not new. They have been before this and other courts throughout this country in numerous cases, and the rights of the citizen, as against such interferences, have been frequently defined and uniformly upheld. These constitutions insure to every person liberty and the protection of his property rights, and provide that he shall not be deprived of life, liberty or property without due process of law. The liberty of the citizen includes the right to acquire property, to own and use it, to buy and sell it. It is a necessary incident to the ownership of property that the owner shall have a right to sell or barter it, and this right is protected by the Constitution as such an incident of ownership. When an owner is deprived of the right to expose for sale and sell his property he is deprived of property, within the meaning of the Constitution, by taking away one of the incidents of ownership.

Another attempt to limit competition arises in the cases of certain firms doing a trading-stamp or gift-coupon business. There has been a large number of laws passed by the States to prohibit this business and also one act passed by Congress pertaining to the District of Columbia, but all the courts of the country have held that such legislation is unconstitutional, except where the gift enterprise took the form of a lottery. The reasoning in all of these cases applies to the bill now pending, because the purpose is to interfere with free and unrestricted competition and the free right of individuals to contract and to make a living in any legitimate way. I want to call your attention to several cases relating to the stamp or gift-enterprise acts which are in point here:

State *v.* Dalton, 22 Rhode Island, 77.
Young *v.* Commonwealth, 45 So. Eastern, 327.
People *v.* Dycker, 72 App. Div. N. Y., 308.
People *v.* Gillson, 109 N. Y., 389.

In the case of People *v.* Gillson, cited above, Justice Peckham said:

> The following propositions are firmly established and recognized: A person living under our Constitution has the right to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. The term "liberty" as used in the Constitution is not dwarfed into mere freedom from physical restraint of the person of the citizen as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare.
>
> Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. These principles are contained and stated in the above language in various cases, among which are Live Stock Association *v.* Crescent City, etc., Co. (1 Abb. (S.), 388, 398), Slaughter House Cases (16 Wall, 36, 106), Matter of Jacobs (98 N. Y., 98), Bertholf *v.* O'Reilly (74 id., 509), People *v.* Marx (99 id., 377).
>
> It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the fair, free, and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors in the commercial, agricultural, manufacturing, or producing fields. By the provisions of this act a man owning articles of food which he wishes to sell or dispose of is limited in his powers of sale or disposition. A liberty to adopt or follow for a livelihood a lawful industrial pursuit, and in a manner not injurious to the community, is certainly infringed upon, limited, perhaps weakened or destroyed by such legislation.

One of the best discussions concerning attempts by legislation to limit competition occurs in the case of State *v.* Dalton (22 R. I., 77). On pages 87, 88, and 89 Judge Tillinghast pointed out clearly how impolitic and unconstitutional such interference with modern business always is:

In this connection it is pertinent to observe that it is not enough to warrant the State in absolutely prohibiting a given business, that it is conducted by methods which do not meet with general approval. There must be something in the methods employed which render it injurious to the public in some one of the ways before mentioned, in order to warrant the State in interfering therewith. Nor is it enough to bring a given business within the prohibitory power of the State that it is so conducted as to seriously interfere with or even destroy the business of others. Take, for illustration, the great department stores in our large cities. By reason of the almost infinite variety of goods which they carry they furnish greater facilities to customers, and can offer them greater inducements in the way of trade than can those stores which carry but a single line of goods. The result is, as everybody knows, that very many small traders have been crushed out and obliged to abandon their business entirely, while the owners of the mammoth establishments which supply almost everything which we eat, drink, wear, use, need, or desire, whether useful or ornamental, are prosperous and successful in a remarkable degree. But while the result of this method of doing business is injurious to those who employed the more primitive one, can it be said that a law prohibiting a department store would be a valid exercise of the police power? Clearly not.

A case decided no longer than December last holds that such a law is invalid. We refer to the case of Chicago *v.* Netcher (55 N. E., 707), in which it was held that an ordinance prohibiting a person, firm, or corporation from exposing for sale or selling any meat, fish, butter, or other provisions in any place of business in the city where dry goods, clothing, or drugs are sold, tends in no way to protect the safety, health, or morals of the public, or to accomplish an object falling within the police power. It was also held that such an ordinance contravenes the provisions of both the Constitution of the United States and of the State insuring to every person liberty and the protection of his property rights, and providing that he shall not be deprived of life, liberty, or property without due process of law. In State *v.* Ashbrook (55 S. W., 627), decided in February last, the Supreme Court of Missouri strongly condemns legislation which attempts to abridge or hamper the right of a citizen to pursue any lawful calling or avocation which he may choose without unreasonable regulation or molestation.

It may be demoralizing to legitimate business for two great rival dry goods houses to cut prices in the attempt to undersell each other, or for two competing railway lines to sell tickets at half price in the attempt of each to get an advantage over the other; yet probably no one would claim that such competition could be prohibited by law. Bargain sales and bargain counters may be demoralizing to business, but probably no one would claim that they can be abolished by law.

The invention of labor-saving machinery may be said to demoralize business, and so may numerous other innovations in manufacturing and industrial pursuits whereby old methods have to be abandoned and new ones adopted. But whatever demoralization results therefrom is incidental to that principal of evolution which is everywhere manifest in the mercantile and industrial as well as in the physical world. The great law of competition invites and promotes this sort of demoralization and the remedy for one who is injured by it lies not in legislation, but in being able to keep pace with the changed if not always improved methods.

In several other cases legislative bodies have attempted under the guise of health legislation to limit competition, but whenever the court has been able to see that the real purpose of the law was not the protection of health but rather a protection of an industry from competition, the legislation has been held illegal. For example, in one case the Supreme Court of New York held unconstitutional a statute designed to prevent manufacture of cigars in private houses. Matter of Application of Jacobs (98 N. Y., p. 114). The court said:

Under the guise of promoting the public health, the legislature might as well have banished cigar making from all the cities of the State, or confined it to a single city or town, or have placed under a similar ban the trade of a baker, of a tailor, of a shoemaker, of a wood carver, of any other of the innocuous trades carried on by artisans in their own homes. The power would have been the same and its exercise, so far as it con-

cerns fundamental, constitutional rights, could have been justified by the same arguments. Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution while far removed in time, we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements of labor or artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturbed the normal adjustments of the social fabric and usually deranged the delicate and complicated machinery of industry and caused a score of ills while attempting the removal of one.

It is believed that the cases cited above cover practically all legislative attempts to limit competition and it has been shown that they have been universally held unconstitutional. One other case that we desire to call attention to is The People *v.* Hawkins (157 N. Y., 1), in which the court held unconstitutional an attempt by the State of New York to limit competition by convict-made goods, and in which Justice O'Brien made the following statement concerning legislation of this character and its evil effects:

We may assume, therefore, that the purpose of the law was to promote the welfare of the laboring classes by suppressing, in some measure, the sale of prison-made goods. Waiving for the present the question whether the means employed can ever in the nature of things accomplish the end in view, it is quite clear that unless this statute in some degree affects the value of certain articles of merchandise by restricting the demand or imposing conditions upon the right to deal in them as property, in order to exclude them from the market, it is a mere brutum fulmen. The scrubbing brush in question was beyond all doubt an article of property in which the defendant could lawfully deal. He is forbidden, however, by this statute, under all the penalties of the criminal law, from buying or selling or having in his possession, except upon the condition that he shall attach to it a badge of inferiority which diminishes the value and impairs its selling qualities. It is not claimed that there is any difference in the quality of this scrubbing brush when compared with one of the same grade or character made outside the prisons. There is no pretense that the act was passed to suppress any fraudulent practice or that any such practice existed with respect to such goods. The validity of the law must depend upon the exercise of the police power to enhance the price of labor by suppressing, through the instrumentality of the criminal law, the sale of the products of prison labor.

The citizen can not be deprived of his property without due process of law. The principle embodied in this constitutional guaranty is not limited to the physical taking of property. Any law which annihilates its value, restricts its use, or takes away any of its essential attributes, comes within the purview of this limitation upon legislative power. The validity of all such laws is to be tested by the purpose of their enactment and the practical effect and operation that they may have upon the property. A law which interferes with property by depriving the owner of the profitable and free use of it, or hampers him in the application of it for the purposes of trade or commerce, or imposes conditions upon the right to hold or sell it, may seriously impair its value, against which the Constitution is a protection. The fact that legislation hostile to the rights of property assumes the guise of a health law or a labor law will not save it from judicial scrutiny, since the courts can not permit that to be done by indirection which can not be done directly.

The guaranty against depriving the citizen of his liberty comprehends much more than the exemption of his person from all unlawful restraint. It includes the right to engage in any lawful business, and to exercise his faculties in all lawful ways in any lawful business, and to exercise his faculties in all ways in any lawful trade, profession, or vocation. All laws, therefore, which impair or trammel these rights, or impose arbitrary conditions upon his right to earn a living in the pursuit of a lawful business are infringements upon his fundamental rights of liberty, which are under constitutional protection. These rights may doubtless be affected to some extent by the exercise of the police power, which is inherent in every sovereign State. But that power, however broad and extensive, is not above the Constitution.

The conduct of the individual and the use of the property may be affected by its lawful and proper exercise in cases of overruling necessity and for the public good. The preservation of the public order, the protection of the public health and the

prevention of disease, the sale of articles of unwholesome or adulterated food, the calamities caused by fire, and perhaps other subjects relating to the safety and welfare of society, are within its scope. But no law which is otherwise objectionable as in conflict with the fundamental guaranties of the Constitution can be upheld under the police power unless the courts can see that it is some plain or reasonable relation to those subjects or some of them.

These principles have been so fully discussed and sanctioned by judicial authority and so often asserted that they may now be regarded as elementary. It is, therefore, unnecessary to enter the vast field of litigation involving discussions of the police power and the validity of statutes enacted really or ostensibly in its exercise. (Wynehamer *v.* People, 1 N. Y., 378; In re Jacobs, 98 N. Y., 98; Lawton *v.* Steele, 119 N. Y., 226; Forester *v.* Scott, 136 N. Y., 577; Colon *v.* Lisk, 153 N. Y., 188.)

It is entirely safe to assert that no court has yet invoked the police power to justify a statute, the purpose of which was to enhance the wages of labor in certain factories by suppressing, through the agencies of the criminal law, the sale of competing products made in prison. If the wages of labor in a few factories producing goods such as are also made in prisons may be regulated by the police power, there is no reason why that power may not be used to regulate the rewards of labor in any other field of human exertion. That all legislation of this character with this end in view which subjects the individual to criminal prosecution unless he will comply with regulations in the sale of such goods that are intended to depress their value or demand in the market is in violation of the Constitution can not be doubted.

It would be trifling with the Constitution to attempt to uphold this law on the ground that all producers or venders of goods may be required to tell the truth concerning them, both as to their quality and the means by which or the place where they were manufactured. A knowledge of the truth concerning the origin of every article of property which is the subject of sale, trade, or commerce can not be essential to the public welfare, and even if it was, the law could be effective only when applied to all property alike, and not limited to articles made in certain places and by a certain class of workmen. Any attempt to carry the police power to such an extent as to require the owner of an article of property kept for sale, such as a scrubbing brush, to label it with the history of its origin and to indicate the place where it was made and the class of workmen that produced it, and to enforce such regulations by the aid of the criminal law, must be regarded as an inexcusable and intolerable invasion of the rights and liberty of the citizen.

There is nothing in the character or effect of prison labor to justify such legislation. The health and welfare of convicts is a subject peculiarly within the functions of government. The State, in order to carry out the purposes of punishment, must employ them at some useful labor. Whatever it may be, their work must in some degree come into competition with the labor of others. It is not at all likely that this result ever had or can have any material or perceptible influence on wages. But even if it had, the welfare of the convicts and the interests of the taxpayers are proper subjects for consideration.

The question is reduced to the simple inquiry whether the legislature under the guise of the police power can regulate the price of labor by depressing, through the penalties of the criminal law, the price of goods in the market made by one class of workmen and correspondingly enhancing the price of goods made by another class. If the statute does not tend to produce that result, there is no reason or excuse for its existence, and it would be a useless and arbitrary interference with the liberty of the individual without any possible reason or motive behind it. The law is now defended upon the ground that it was intended to accomplish, and in fact does tend to promote, that very result. If the police power extends to the protection of certain workmen in their wages against the competition of other workmen in penal institutions, why not extend it to other forms of competition? Why not give the workman who has a large family to support some advantage over the one who has no family at all? Why not give to the old and feeble a helping hand by legislation against the competition of the young and the strong? Why not give to the women, the weaker sex, who are often the victims of improvidence and want, a preference by statute over the men? Why confine such legislation to scrubbing brushes and like articles made in prisons, when multitudes of men engaged in farming, mercantile pursuits, and almost every vocation in life are struggling against competition? If the statute now under consideration is a valid exercise of the police power, I am unable to give any reason why the legislature may not interfere in all the cases I have mentioned to help those who need help at the expense of those who do not.

It would be difficult to give any satisfactory reason, legal, moral, or economic, why a person who happens to be confined in a prison should not be permitted or compelled to earn his living and pay his way instead of becoming a burden upon the public, to

the detriment of his health and morals. The mere fact that he is in prison may be due to misfortune or to his natural surroundings, and in some cases he may be at least morally innocent. The State may, certainly, for his own benefit and for the relief of the tax-paying community, employ him at some useful labor, and whether that labor be in building roads or making shoes he takes the place of another. If it be lawful and right to so employ him, it is difficult to see why the State may by legislation depress the value of the products of his labor when such property is purchased in the ordinary course of commerce by a dealer therein. The State, while permitting such property to come withing its jurisdiction in the regular course of trade, can not then impair its value by hostile legislation without a violation of the constitutional guaranties for the protection of property. Aside from the peculiar restrictions of revenue laws, the merchant or dealer may buy his goods where he can obtain them to his best advantage, and any restriction upon his freedom of action in this respect by State laws is, in a broad sense, an invasion of his right of liberty, since that term comprehends the right of the individual to pursue any lawful calling.

I think that the statute in question is in conflict with the constitution of this State, since it interferes with the right to acquire, possess, and dispose of property and with the liberty of the individual to earn a living by dealing in the articles embraced within the scope of the law. It is an unauthorized limitation upon the freedom of the individual to buy and sell all such articles, subject only to the law of supply and demand, and the legislation is not within the scope of the police power.

This case concerning the attempt to use the police power to suppress competition was the first case ever decided concerning convict-made goods, and it was specifically held that the police power could not be used to suppress competition. Since this decision there has been another case recently decided by a New York court which directly bears upon the questions here. That is the case of People *v.* Raymes (120 N. Y., 1053), affirmed in 198 New York, 539.

The CHAIRMAN. Let me ask you a question. You concede that the State has the right to pass a law forbidding the sale of prison-made goods in that State?

Mr. ALLEN. I think the legislature can control the product of its convicts.

The CHAIRMAN. To the extent of the boundary of the State it is an impairment to the right of competition?

Mr. ALLEN. Yes, sir.

The CHAIRMAN. If the State has the power to limit competition by such a law, does not the same logic grant the Federal Government power to limit competition in interstate trade?

Mr. ALLEN. No; because the Constitution of the United States covers the subject, I think. When the Constitution was adopted the most important power given was the power to lay and collect taxes, duties, imposts, and excises, and the second most important power was the one regulating commerce among the several States, and this second power was considered very important.

The CHAIRMAN. Let me call your attention to the fact that paragraph 3 of section 8, Article I of the Constitution is in this language:

> To regulate commerce with foreign nations and among the several States and with the Indian tribes.

Mr. ALLEN. As I take it, that means that they have the right to regulate commerce, but they do not have the right to restrict in any way commerce between the various States. The point that I want to make here is that the question of free competition and the free right of contract is involved in this bill, and under the Constitution and the decisions which I have called the committee's attention to, I am sure that Congress has not the authority to interfere by the interstate-commerce route with the rights guaranteed by the Consti-

tution to every citizen to contract and to trade with whom he pleases and to compete in any market that he desires.

The CHAIRMAN. The State having the admitted power to forbid the sale of prison-made goods within its bounds, do you not think that a fair construction of this commerce clause of the Constitution would give to Congress the power to allow that State to protect itself against prison-made goods manufactured in other States?

Mr. ALLEN. No; I do not think so.

The CHAIRMAN. Can the State interfere with competition?

Mr. ALLEN. It can do what it pleases with its own convicts, but it can not interfere with goods manufactured in other States, whether those goods are made by convicts or free labor.

The CHAIRMAN. That is very true of a State, that it can not interfere with interstate commerce in any way. However, can not the Federal Government, having exclusive jurisdiction of interstate commerce, say, by a law such as the pending bill, give to the State the power to protect itself against prison-made goods in other States?

Mr. ALLEN. I do not think so. If one State is to be allowed to legislate against the products of another State because they are made by convict labor, this at once causes discrimination between the various States against each other. The framer of this bill has attempted to circumvent this and prevent equality by saying that they shall be treated the same as convict-made goods produced within the State or in any State having a law upon this subject. To say that a State can legislate against the methods of production of other States because it does not use a similar method of production itself is necessarily to say that it may discriminate against the goods of other States. It would be just as logical to say that because one State does not have long hours of labor within its boundaries it can therefore exclude the goods of other States which employ long hours of labor. To allow such legislation would, in my judgment, be to permit discrimination of the most obvious character. If a State can forbid the introduction and sale of convict-made goods because it does not produce the sale of the convict-made goods itself, it can then forbid the introduction of any kind of goods into its own borders. For instance, if it had this power, a State could prohibit goods manufactured from cotton picked by negroes from coming into the State and being sold there or it could prevent goods made by Chinese labor in California from coming into the State.

The CHAIRMAN. I call your attention to the fact that this bill does not prevent the goods from coming into the State. It makes the goods subject to the laws of the State after they come in.

Mr. ALLEN. Yes; I understand that, but there is no use of sending them into the State if they can not dispose of them there. The purpose of the bill is to prevent the sale of goods in the States that have a law upon this subject, and so far as goods made by the Nebraska penitentiary are concerned, they are largely sold in the New York and Chicago markets, and if this bill should become a law it would entirely destroy those markets for the convict-made brooms in Nebraska. It seems to me that if Congress can prevent, by indirection, the sale of these goods in the State of New York, Congress could, in the same manner, if it so desired prevent the sale of almost any kind of goods in any State. It would be giving to Congress a power that the Constitution never contemplated.

The CHAIRMAN. Speaking generally, as a matter of right and comity between the States, do you think that New York State, for instance, having denied the market to its own prison-made goods, ought to be forced to furnish a market for Nebraska prison-made goods?

Mr. ALLEN. I do not see why they should not. My theory is that it does not make any difference whether the goods are made in prison or out of prison, so long as the quality is all right, or there is nothing wrong with the goods. New York, as I understand it, provides that her goods can be sold only to State institutions; penitentiary-made goods can be disposed of to State institutions but not to the public generally. In my judgment no State can have the right to legislate against the goods of another State on account of its disapproval of the methods used to manufacture those goods. The citizens of each State have the undoubted right to manufacture, according to the laws of the place, and when they have thus manufactured, they ought to have the right to sell their goods freely throughout the States; and for one State to forbid the sale of those goods within its boundaries because it may disapprove of the methods of production used in the State where they were produced would be the grossest kind of discrimination against the goods of other States that has ever been attempted. Every law in which one State has attempted, directly or indirectly, to legislate against the production of other States has uniformly been held unconstitutional.

Welton *v.* Missouri, 91 U. S., 275.
Freeman *v.* Rinker, 102 U. S., 123.
Walling *v.* Michigan, 116 U. S., 446.
Voight *v.* Wright, 141 U. S., 62.
Scott *v.* Donald, 165 U. S., 58.
Brimmer *v.* Rebman, 138 U. S., 78.
Vance *v.* Vandercook, 170 U. S., 438.
In re Watson, 15 Fed., 517.
State *v.* North, 27 Mo., 464.
State *v.* Furbush, 72 Maine, 492.

In the case of Welton *v.* Missouri (91 U. S., 275), at page 280, Justice Field said:

Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different States. The power to regulate it embraces all the instruments by which such commerce may be conducted. So far as some of these instruments are concerned, and some subjects which are local in their operation, it has been held that the States may provide regulations until Congress acts with reference to them; but where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority.

It will not be denied that that portion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities is of national importance and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating State legislation. The depressed condition of commerce and the obstacles to its growth previous to the adoption of the Constitution, from the want of some single controlling authority, has been frequently referred to by this court in commenting upon the power in question. "It was regulated," says Chief Justice Marshall in delivering the opinion in Brown *v.* Maryland, "by foreign nations, with a single view to their own interests, and our disunited efforts to counteract their restrictions were rendered impotent by want of combination." Congress, indeed, possessed the power in a great degree useless. Those who felt the injury arising from this state of things and those who were capable of estimating the influence of commerce on the prosperity of nations perceived the necessity of giving the control over this importan

subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. (12 Wheat., 446.)

In the case of Crutcher *v.* Kentucky (141 U. S., p. 47), at page 66, Mr. Justice Harlan said:

Undoubtedly a State may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress, or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or of other States. The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon terms of equality with the owners of like meats, from animals slaughtered in Virginia or elsewhere, within 100 miles from the place of sale. Any local regulation which in terms or by its necessary operation denies this equality in the markets of a State is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States, and therefore void. (Welton *v.* Missouri, 91 U. S., 275, 281; Railroad Co. *v.* Husen, 95 U. S., 465; Minnesota *v.* Barber, 136 U. S., 313, 319.) The case of Brimer *v.* Rebaman was decided in accordance with these views, the law in question being held to be unconstitutional and void. The decision in that case is so directly apposite to the present that it is not necessary to prolong the discussion or to cite further authorities.

It can not be successfully argued, in my judgment, that Congress can confer on the States by any form of legislation the right to discriminate. While this act does not directly do that, indirectly it has the same effect—that is, it gives the State of New York the right to discriminate against convict-made goods of other States. Congress can not itself discriminate between the States any more than it can allow one State to discriminate against another, and, as I understand it, this is not permissible under the Constitution. After the passage of the Wilson bill that I have called attention to, South Carolina attempted to discriminate against intoxicating liquors of other States, and such legislation was held to be illegal. That was decided in the case of Scott *v.* Donald (165 U. S., 58).

Senator BRANDEGEE. But there is no discrimination if the State of Nebraska prohibits the sale of goods made by convicts within that State by its own convicts, and then if this bill passes, and it provides that any convict-made goods shipped into Nebraska shall be subject to the laws of the State as to such goods. That would not discriminate?

Mr. ALLEN. Yes; it would discriminate against Illinois, for instance, which does not have a law of that kind.

Senator BRANDEGEE. Why would there be any discrimination between Nebraska and Illinois if Nebraska could not sell its own convict-made goods in its own State?

Mr. ALLEN. The discrimination is against the manufacturer in Illinois because it prevents him from the free right of contract to sell his goods in Nebraska or in any market that he can, and where he can get the best price.

Senator BRANDEGEE. That may not be a discrimination. It says to the States, none of you shall ship into Nebraska, if Nebraska will not allow convict-made goods to be sold within its own State.

Mr. ALLEN. Take this case, for instance: New York has this statute at the present time. In Nebraska we manufacture brooms in the

penitentiary to be marketed say in New York, but the minute this law is passed our market would be destroyed. We say you can not destroy our market, but by this kind of legislation, that is what is being attempted. We will have to cancel our contracts and put the prisoners to work at something else.

Senator BRANDEGEE. The fact that your market may be destroyed does not necessarily imply that it is discrimination. You may lose your market, but where is the illegal discrimination? You are so situated that you have your market in New York. Suppose Congress should say that no goods made by convicts in any State shall be shipped into any State without being subject to the laws of that State. I want to know where the discrimination comes in?

Mr. ALLEN. Suppose the case that I have stated, that the brooms we make in Nebraska can be sold in no State except the State of New York.

Senator BRANDEGEE. Owing to what? Owing to the lack of demand?

Mr. ALLEN. Owing to the lack of demand or conditions.

Senator BRANDEGEE. I do not think that is discrimination. I think the discrimination must be subjective. The statute will not make the discrimination and the fact that nobody but the people in New York happen to want your goods or that you prefer to sell them there, and that you lose your market, I can not see how that is discrimination by the statute in favor of the goods of one State over those of another.

Mr. ALLEN. I think it is discrimination, because under the Constitution every citizen has the liberty to trade where he pleases, if by so doing he does not interfere with the public health, the public safety, and the public morals.

Senator BRANDEGEE. I do not think you are correct in saying it is illegal discrimination. It may be discrimination for some other reason.

Mr. ALLEN. Well, the bill, if enacted into law, will certainly interfere with the free right of contract.

The CHAIRMAN. This bill, as I suggested, puts prison-made goods in the State of New York, for instance, when they reach New York, on the same level, no matter where they are manufactured. New York has a law against the sale of those goods made in the State of New York. This law says that all prison-made goods are subject to the same law.

Mr. ALLEN. It puts Nebraska made goods on the same basis as New York goods and Congress is attempting to do it.

The CHAIRMAN. Therefore it is no discrimination for or against any State with reference to prison-made goods; they are all put on the same level by this act.

Mr. ALLEN. No, but it is a discrimination against the manufacturer. To continue my statement: The present proposed legislation is unconstitutional because it is an illegal attempt by the United States with the aid of some of the State legislatures to control the penal methods of the States. The purpose of this bill is an attempt by Congress to interfere with and regulate the penal institutions of the States. These State penitentiaries and the methods used by them are part of the police system of each State, and each State has the right to regulate for itself, and for Congress to interfere with it is

to interfere with the rights of the State. It is the effective operation of the law which determines its constitutionality and I think that it makes no difference whether Congress absolutely forbids the importation of convict-made goods between the States, or whether it disguises its interference in the form of permission to the States to legislate, and as I understand it, that is what the bill now pending does, it concedes to each State the right to make such laws as it sees fit.

In conclusion I want to say that one of the reasons why Congress could not interfere with interstate commerce and attempt, by indirection, to destroy a market which has been established by the sale of these goods, is that all States continue to build up these large centers which become the markets of the country; for instance, in the Middle West, Chicago has become a great manufacturing center and a great distributing center. This is not because of anything that Chicago has done that has brought this about, but it is because of the adjacent States throwing everything into the lap of Chicago that has made it a manufacturing and distributing center, and it seems to me that now, since commerce has taken the form it has and has built up these distributing centers and has afforded markets for the different States, for Congress to say that they will destroy that market after it has been built up is a discrimination against the goods manufactured in the different States. As I said before, it occurred to me that Congress would have as much right to legislate against any other class of goods manufactured in any other way as it would have to legislate against convict-made goods, because there is nothing apparently wrong in the manufacture of convict-made goods.

There is another objection, and a serious one, to this bill. Most of the States that have the contract system make contracts running over a period of years, and the board of public lands and buildings in the State of Nebraska now has an outstanding contract that runs for three years in letting out this convict labor and agreeing to protect the contractor. If this bill should be enacted into law, Nebraska, of course, could not fulfill its contract, and would be in an embarrassing position with the contractor, and probably subjected to great loss. In addition, the State would have on its hands 475 convicts with no work for them to do, and would necessarily have to keep them locked in their cells, which treatment, as I have stated before, is universally condemned by all reformatory associations.

The CHAIRMAN. I wish to introduce into the record a letter addressed to me by Hon. Chester H. Aldrich, governor of Nebraska, relating to the subject matter of this inquiry:

STATE OF NEBRASKA, EXECUTIVE OFFICE,
Lincoln, Nebr., June 24, 1912.

Hon. NORRIS BROWN,
Washington, D. C.

MY DEAR SENATOR: My attention has been called to House bill 5601. On looking over this measure, I am satisfied that if it becomes a law it will do away with the contract labor that we now have in the Nebraska penitentiary, because it destroys the market for brooms manufactured there, and also of wicker chairs.

These two particular classes of goods do not come in contact with free labor to any appreciable amount. It will leave a serious problem on our hands in this State if this bill passes, for we will have 500 idle men without ability to give them any work.

There are many States which have passed laws to the effect that convicts can not sell goods of prison labor to anything but state institutions. This would destroy a big broom market that the Nebraska penitentiary has in Illinois and in many other States.

I believe the bill, so far at least as it applies to Nebraska, is contrary to public policy, and I hope you will see your way clear to oppose it. It is a mighty serious problem with us.

Yours, truly, CHESTER H. ALDRICH.

Thereupon, at 12.10 o'clock p. m., the hearing adjourned.

SATURDAY, JULY 6, 1912.

SUBCOMMITTEE OF THE COMMITTEE ON JUDICIARY,
UNITED STATES SENATE,
Washington, D. C.

The subcommittee met at 10.30 o'clock a. m.

Present: Senators Brown (chairman), Brandegee, and Paynter.

STATEMENT OF DR. P. H. LINDLEY, VICE PRESIDENT OF THE STATE OF WISCONSIN (FOR THE BOARD OF CONTROL).

Dr. LINDLEY. Since the State prison at Waupun was created the convict labor has been employed on contract at a certain price per day. For about 30 years the convict labor was employed on a contract with M. D. Wells & Co., of Chicago, at 50 cents per day, the State furnishing the heat, power, light, water, and shop room. After that contract expired, a contract was made with the Paramount Knitting Co. for the employment of convict labor in the making of socks and stockings; under that contract the State receives 65 cents per day per convict, the State furnishing the heat, shop room, power, light, and water.

At the present time about 450 to 500 convicts are employed by the Paramount Knitting Co. under that contract, and the revenues received by the State for the convict labor are approximately $100,000 per annum. No other industries are now in operation at the prison.

Most of the labor of the reformatory is employed by the Sterling Manufacturing Co. in the manufacture of jackets and overalls on the piece-price system. A small number of boys are employed in the manufacture of brooms under a contract with a local firm.

When the legislature made the appropriation for the running or current expenses of these institutions, the earnings of the institutions were taken into account, and appropriations were only made for the difference between the estimated earnings and the estimated expenditures of the institutions for the biennial period. There are no industries at either of these institutions at the present time except those which have been mentioned.

At the State prison a binder-twine plant has been built, and after September 1, 1912, about 65 to 75 men will be employed in the manufacture of binder twine, but no revenues will be derived from that industry until after the close of the present biennial period, which ends July 1, 1913.

The contract for the labor of the convicts at the State prison will not expire until the 15th day of January, 1914.

Under the contracts at both institutions the contractor shall have the right to terminate the contract in case the National Congress

during the life of the contract shall enact a law prohibiting the transportation of prison-made goods to States other than the State of Wisconsin, or if any law relating to convict labor be enacted which renders it impossible for the contractor to employ the convict labor without pecuniary loss.

If H. R. 5601 becomes a law it will undoubtedly have the effect of canceling both of the contracts for the employment of convict labor at once. This will leave the institutions without revenues with which to maintain them until the next meeting of the legislature, and it will probably be necessary to call the legislature together to make provision for the maintenance of these two institutions. It will also leave the convicts in these institutions without employment. Experience has taught that it is impossible to manage a penal institution without furnishing regular employment to the inmates. When inmates are unemployed they are exceedingly hard to manage, their health becomes impaired, and a large percentage of them go insane. The passage of H. R. 5601 will affect States other than Wisconsin.

If H. R. 5601 is to become a law it certainly should not go into effect at once. There should be time given to the States and contractors who are affected by it to adjust matters so that neither the States nor contractors will suffer serious inconvenience or financial loss. Time should certainly be given to the States which will be affected by the law to make provision for other employment of the convicts and time should also be given to companies employing convict labor to dispose of the products of the convict labor before the law goes into effect.

The CHAIRMAN. Mr. Spurr, we will now hear from you.

STATEMENT OF MR. B. M. SPURR, ARCHDEACON OF WEST VIRGINIA.

Mr. SPURR. Mr. Chairman and gentlemen: I want to make myself perfectly clear. I have been acting chaplain to the State penitentiary of West Virginia for 19½ years. It has been my duty to take care of the men in the prison, and when they leave the prison to find employment for them, if necessary, or take care of them when they are sick. I am what they call a volunteer worker. I receive no pay for my work. I strive as best I can to get means to help the men when they go outside. It is necessary to state this, for I have heard this questioned concerning the matter set forth in the bill discussed so often by men who are paid attorneys or represent some industries which are supposed to be hurt by the men. In the 19½ years that I have been in West Virginia I have not met the kind of contractor that I have heard spoken of in the Associated Charities and their connections Our men have uniformly given the convicts fair play. We have in prison men who send from $2 to $30 a month to their families on the outside, and there are very few of them who need help from any association when released.

If this bill as amended should pass the Senate, it would mean that the entire number of men in the West Virginia Penitentiary would be thrown out of employment, for nearly all the goods that are made in the penitentiary are exported. They go either to Illinois, New York, Pennsylvania, or Massachusetts, or places which have passed laws restricting the sale of convict-made goods; so in that way we

would have nothing whatever for the men to do. They speak about road making. It is impossible for six months in the year, in our State.

Then another thing about that: The men who are opposed to the convicts being employed in this manner should understand that in every State where it has been tried there are hundreds of these men who suffered every day, simply because they had nothing to do. Then take the men in the States where they are not allowed to work under contracts, or where they can earn a certain amount of money; in Pennsylvania they get 1½ cents a day, in New York State 3 cents a day. These amounts are taken up entirely by the tobacco which they consume, or any little thing which they want to get inside of the prison, and not a single cent goes to the family or the dependent ones outside of the prison walls. I recently investigated the system in the State of Pennsylvania. The men there are employed in various ways; paring rags and making stockings—two and a half dozen a day—when every man who does so understands perfectly well that by machinery he could make 65 dozen with a great deal less expenditure of labor. In going through that prison and talking to each one of the prisoners I came to a man and said, "Have you got your stint done?" He said, "The stint don't amount to anything at all." I said, "Do you like this loafing around?" He replied, "There isn't a man on this row but what would bless you and God if they could get something really to do which was practical and amounted to something."

I was constantly among the prisoners, questioning them one by one. In the eastern penitentiaries a man has a cell, probably 10 feet in length, 8 feet in width, and rising from 7 to 9 feet; no window in the side, but a window in the roof, then a small yard beyond, 8 feet by 12 feet, in which he is allowed, twice a day, to exercise for half an hour. Thus he goes along, doing this perfunctory work, notwithstanding the fact that there is no real value coming back for his exertion.

After that I visited a great many of the prisons and came to one which is probably the best illustration of the contract labor being against the men in prison, of any in the United States. I saw one long room, 100 feet in length, by 40 feet in width, and 9 feet in height. At one end there were four windows, at the other end three, and at the northwest corner, two windows. In that room—I think it was the month of May and at 2 o'clock in the afternoon, with the sun shining brightly outside—the whole of the place had to be lighted by gas and electric light in order that the men could see to read a few magazines, and in that room were 600 men with not a single thing to do.

The CHAIRMAN. Where was that prison?

Mr. SPURR. It was the prison at Columbus, and then you must remember that in that prison at that time they were running 685 prisoners against the fact that the law said they should not run near that number. The warden said he would get them out by the end of the month, probably; he did not know. I spoke to one of those 600 men in that room and said: "Are you reading that magazine?" He replied: "No; I am just looking through it." I asked him, "Do you men like this easy time?" He replied, "Does any man like an easy time like this? I tell you it is hell." The men had that whole appearance. If the people really understood where this law was taking

them, they could not favor such a law, unless they believed that when a man went into prison he left his appetite behind him, that all the things that are inherent to human flesh have been entirely left behind, because even under the system where we had men working and occupied fully, there are all those sins which pertain to the lowest part of human nature in every prison in the country. It is difficult to eradicate all of them. No man that knows anything about prisons would say that they could. But you can limit them to a certain extent.

Take, for example, New York State and the State of Ohio and other States where to-day they have the bucket brigade, and anyone that knows anything about prisons understands perfectly well that the diet which the men get—particularly in our State, where the men come from the free mountain air to the confinement of the prisons—causes a running off of the bowels, and yet a man has to use that in his cell and stay in his cell with that miserable odor from probably half past 11 on Sunday until half past 6 or quarter to 7 on Monday morning; and that any night, if anything of that character should occur.

Let me say something further along that line. I have talked to thousands of these men. It has been my lot to prepare some 34 of them for execution. If it had been for money, I would never have done it in the world. I have talked to these men and I know positively that for them to be without labor that will be productive to them and productive to the State is for them to be damned, and I do not believe that the gentlemen of the committee, if they could see what I see every day of these men that are actually employed and then go around from prison to prison seeing the men who are not employed at all, would think that there should be a favorable report made on this bill.

Let me call your attention to another thing: As I understand this bill—and I may be wrong in that regard—we have in this country about 2,500 to 3,500 parole men. If a man is out on parole, he is still a convict. He never ceases to be a convict until the time of his parole has expired. If that is so and this bill goes into effect, these men can not work. Suppose they go into a steel factory or a woolen mill or a cotton mill; the stuff which is produced wholly or in part by ehese parole men can not be sold in the market. If the man that tmploys convicts does sell that stuff, he is liable to the penalty which is prescribed in this law. That is my understanding of it. Therefore, all these men that are under parole would be practically debarred from seeking profitable employment.

I do not think I have anything more to say on the subject. I am just for the fellow that is behind the bars, that is all. I know from experience of many, many years that the men have a hard time as it is to just keep their nerves together, and when a man has the feeling that he wants to be right outside before he gets outside, there has got to be hard work in himself and a good deal of the grace of God in his heart if he wants to be honest and straight. If it is that way in a working system where he can earn something, God in heaven only knows what it will be if you pass this bill this way. I know very well that the committee will not report favorably on the bill, and I simply ask a sympathetic interest for what I have said for the sake of the men who are behind the bars.

Senator BRANDEGEE. What proportion of the men who are discharged from prison in this country are returned afterwards?

Mr. SPURR. An answer to that question would be largely approximate, but I do not think more than 30 per cent.

Mr. BROWN. In my estimation it would not be more than 5 per cent, although that is only approximate.

Senator BRANDEGEE. Not over 5 per cent get back in penal institutions?

Mr. SPURR. Do you mean just in State penitentiaries?

Senator BRANDEGEE. In all sorts of penal institutions.

Mr. SPURR. I will not change my opinion about the matter.

Senator BRANDEGEE. My impression is that the warden of the Connecticut State Prison gave me some years ago a much higher percentage returned than you have mentioned. I am not clear enough about it, however, to state it as a fact. But it lays in my mind that a much larger percentage were afterwards returned to some penal institution.

Mr. BROWN. In the 20 years I have been in the West Virginia Penitentiary I have not known more than 50 men who have come back to our penitentiary.

Senator BRANDEGEE. What percentage would that be?

Mr. BROWN. A good deal less than the percentage given by Mr. Spurr.

Senator BRANDEGEE. What proportion of the life prisoners would become insane?

Mr. SPURR. I could not give you the percentage, but very few of them where they are employed. In Lansing, Kans., out of over 800 prisoners the deputy warden told us they had 85 in the asylum. They have a ward in the prison in which they are confined.

Senator BRANDEGEE. What proportion of them become tubercular?

Mr. SPURR. A great many. I couldn't tell you the percentage, but the number is large. I have seen strong men come into our prison down there and be carried out; a great many of them. You take, for example, in New York State, where the narrow cell is 2 feet, with no ventilation from the door; dark; with the bucket brigade; the result must be simply terrific. In West Virginia we have the cleanest penitentiary in the whole of the United States, and I have seen most of them; none of them can beat ours in cleanliness and light.

Senator BRANDEGEE. What proportion of these discharged convicts are able to obtain positions to support themselves after leaving the institution?

Mr. SPURR. In our State most all of them. I do not believe there is an exception. Work in our State is largely mining, steel, and railroad building, and there is no difficulty for the men to obtain employment. On Monday I preached in five different mining camps, and 20 men came out of the congregations and brought their friends to introduce me as their pastor; which is a very, very funny thing. It shows you how lightly they regard the matter.

The CHAIRMAN. You were the pastor when they were in the penitentiary?

Mr. SPURR. Yes. It has been my lot in West Virginia to build the largest hospital in the State, and I have in the mountains—in which

work your cousin, Senator Brandegee, helps me very liberally—industrial schools and settlement houses and work for district nurses who go among the coal miners. My work is purely among the men. I have no interest in it, except to help them along, and if you had my experience, you would see how difficult it is for the men in the condition in which they are.

Senator BRANDEGEE. What things do you make in your prison?

Mr. SPURR. Brooms, whips, whip lashes, buggy washers, trousers, womens' skirts, and some brass finishings.

Senator BRANDEGEE. Have you ever determined what the percentage is of the products produced by prison labor as compared with the whole products of the country?

Mr. SPURR. As far as I have been able to ascertain, it is less than one-tenth of 1 per cent—that is, counting, of course, in that question the idea of similar labor on the inside with the similar labor on the outside and not counting the people who do not come in competition. There are about 36,600 convicts employed in this country.

Senator BRANDEGEE. Do you mean, as a matter of fact, that the sale of the prison-made or convict-made goods affects the price at which the same commodities are sold in the market outside?

Mr. SPURR. I do not know that as a fact it does do that, but I should judge it is a great probability that it would. On the other hand, if the State does not provide any other work for the convicts and the contractor must take his risk in that contract for the men, it is just a gambler's risk, whether on the inside or outside. What I had in mind was this: In 1907 we understand how the panics struck this country. Everything was paralyzed for the time being, but the man with 450 men, the man with 260 men, or the man with 500 men under contract must go on all the time and make goods or pay the per diem for the men. In 1893, when the whole country for over a year was under that paralysis, the men had to go on all the time, of course, paying the men and making the goods, and I suppose it would naturally come in competition with the outside goods.

Senator BRANDEGEE. Do you know what the length of time of a contract is in your prison? Is it for different periods?

Mr. SPURR. I think it is for five years. They used to pay us 52 cents. Now we are paid 65 and 75 cents per man.

Senator BRANDEGEE. Per day?

Mr. SPURR. Per day. Our contractors pay the 920 men that are employed something like $28,000 a year for overtime. They make the amount of work prescribed, and for overtime they are paid $28,000 a year. A large amount of this is sent out by the warden to dependent ones of the prisoners who earn the money.

The CHAIRMAN. We are very much obliged to you, Mr. Spurr. We will now listen to the warden of the Moundsville Penitentiary, Mr. Brown.

STATEMENT OF MR. M. L. BROWN, OF WEST VIRGINIA.

The CHAIRMAN. What official position do you hold in West Virginia, Mr. Brown?

Mr. BROWN. I am warden of the West Virginia Penitentiary.

The CHAIRMAN. The committee would be pleased to hear your views on this bill?

Mr. BROWN. Gentlemen, I shall not detain you very long. The archdeacon has covered the ground very well, I think, as it pertains to our institution. We have a large prison in West Virginia; our average population is about 1,160.

The CHAIRMAN. How are they employed?

Mr. BROWN. These men are employed on contract labor, with the exception of the ones that are used for making the clothing, providing for the feeding of the men in the institution, for the running of the farm and various other matters that go to make up the running of an institution. Out of the 1,160 we have usually an average of 900 men on contract labor.

The CHAIRMAN. What sort of labor is it? What are they making?

Mr. BROWN. There is one contract employing about 400 men that make men's trousers; another contract working about 250 men making women's skirts; another employing 100 men on making brooms, and another of 100 men making whips, and another making trimmings for brass beds.

The CHAIRMAN. Are you in favor of this pending measure or against it?

Mr. BROWN. I am against the pending measure.

The CHAIRMAN. Why?

Mr. BROWN. For two reasons. In the first place the economic reason of the loss to the State, and in the second place, for the good of the prisoners.

The CHAIRMAN. Does the pay received from the contractors for the labor amount to enough to maintain the institution?

Mr. BROWN. Yes, sir; we made last year over and above the maintenance of the institution about $32,000.

Senator BRANDEGEE. What is the total amount received from contracts on convict labor?

Mr. BROWN. About $180,000 a year.

Senator BRANDEGEE. Do all of the men get the same wages, irrespective of what they are making?

Mr. BROWN. Do you mean does the State get the same amount?

Senator BRANDEGEE. No; I mean, does the convict who works on brooms get the same wages as the convict who works on brass fittings or on trousers?

Mr. BROWN. Our law is framed in this wise: That after a convict shall have performed his daily task fixed by the warden, for any work done over and above that he shall receive the same pay for his work that the State receives.

The CHAIRMAN. How many of them do excess labor; that is, beyond the stint fixed by the authorities?

Mr. BROWN. I should say three-fourths; 75 per cent of the men will work overtime.

The CHAIRMAN. Is that money paid direct to the convicts or to you in trust for them?

Mr. BROWN. Yes, sir.

The CHAIRMAN. Approximately, how many dollars do you receive as excess wages a year?

Mr. BROWN. About $28,000.

The CHAIRMAN. What becomes of that money?

Mr. BROWN. The prisoners are permitted to buy certain articles for their own benefit in the way of groceries and delicacies to eat; they are permitted to order twice a month. They are permitted to order certain underclothing, socks, and shoes if they want to, for Sunday wear, and a great many of them who have families and dependents at home send the money home.

The CHAIRMAN. What would be the effect of this law, in your judgment, on your contracts now existing?

Mr. BROWN. If the law should become effective at once, it would have a serious effect on the contracts. These contractors buy their materials in large quantities; for instance, the contractor who manufactures brooms has $300,000 worth of broom corn on hand. He buys up a year's delivery in advance, and, likewise, the men who have contracts for other articles buy their supplies in large quantities, and they have them on hand at the present time.

The CHAIRMAN. What would be the effect, in your judgment, on the mental and physical health of the convicts to be idle?

Mr. BROWN. I think it would be very deleterious.

The CHAIRMAN. Can you approximate the percentage of prison-made goods in the manufacturing world?

Mr. BROWN. No; I could not do it, because it is so small it seems to me it is hard to approximate, and as I understand, only about 13,500 prisoners in this country are on contract labor. That number of laborers is so small in comparison with the whole number of laborers.

The CHAIRMAN. In your judgment, would that labor be a factor in reducing the wages of free labor outside?

Mr. BROWN. I do not think it would.

The CHAIRMAN. The effect would certainly be to reduce the price of the products, would it not?

Mr. BROWN. It may be that these men who have these contracts can afford to undersell outside contractors in the market to the limit of the amount of goods they manufacture, although I know one contractor in our prison who does not do it, and who now has 25,000 dozen brooms stored because he will not break the market.

The CHAIRMAN. Why would it not be right and fair to confine the work of prison-made goods to the people of the State in which the prison is located?

Mr. BROWN. There you are touching a vital matter in our State. We have a very limited market in our State for any single article of manufacture.

The CHAIRMAN. You can sell all the trousers, for instance, that you make, can you not, in your State?

Mr. BROWN. I doubt if we could; not that there are not more than that many trousers worn, but everyone doesn't want that kind of trousers. Most of them are cheap trousers made for laboring people. I know we couldn't do it with the brooms or the whips or the brass bed trimmings; neither could we do it for the ladies' skirts.

The CHAIRMAN. Could you not find employment for your prisoners in the mines of West Virginia?

Mr. BROWN. We might operate a mine, but would we not be restricted from shipping that coal into other States, just as we are restricted from shipping other manufactured products?

The CHAIRMAN. But you could certainly sell the coal to the citizens of West Virginia, could you not?

Mr. BROWN. Hardly, because there is coal all over our State, and the market for West Virginia coal is outside.

The CHAIRMAN. Have you any mines close to your penitentiary?

Mr. BROWN. Yes, sir; we have some within a quarter of a mile.

The CHAIRMAN. Soft-coal mines?

Mr. BROWN. Yes, sir. I have thought seriously about this question as to what we might engage in, what kind of profitable labor we might engage our men in in order to run our prison and market our goods in West Virginia, but I can not think of anything. I have had the matter up with the board of control and discussed it with them, and they are at a loss to know in what line of industry we could engage our men profitably and market the product in our own State. Then, on the other hand, gentlemen, it seems hardly fair that we should be restricted to the sale of our goods in our own State, for two reasons: One is that we buy at least 80 per cent of all the supplies for the support of our institution outside of the State of West Virginia. We buy our flour in Minneapolis, meat in Chicago, and machinery in Chicago, drugs in Philadelphia, beans in Michigan, and, in fact, all over the country. We buy less than one-fourth of the supplies in our own State.

The CHAIRMAN. That you use in the penitentiary?

Mr. BROWN. That we use in the penitentiary. It has been suggested that we might use a certain number of the men on the road, and that is true for six months in the year. Probably we could use some of the men during that period, but that does not solve the question. That is simply an incident. You have the men with you all the time, and in large numbers, and it would be a serious handicap in the State of West Virginia if that system were to be changed now. I have made a rather careful study of the effect of idlers among the men in prisons, having visited various other prisons in the country where they do not have contract labor or labor for State use, which, as I understand the bill, would affect in the same way, and I have not seen any prison where the men were as well kept or as well clothed as they are with us. When it comes down to a matter of dollars and cents with the taxpayer, your appropriations are pared down and the men are supported on much less money. The daily rate in some of the prisons where they do not have contract labor is as low as 8 or 9 cents; our daily rate is between 16 and 17 cents for food alone. I am speaking of course of food alone. We can have our prison conducted in an up-to-date manner and give the prisoners a good show and permit them to make this overtime.

Senator BRANDEGEE. How many hours a day is the regular time for working?

Mr. BROWN. Nine hours a day. We work a nine-hour day and have one contract for which we receive 75 cents, another 65 cents, and another 70 cents a day. We have one contract that expires the 1st day of January of 100 men, for which we only receive 52 cents, but that will expire on January 1, and will not be renewed.

Senator BRANDEGEE. On the contract where you receive 75 cents per man per day, how much of that amount does the man get for himself?

Mr. BROWN. He gets just what he makes over his task?

Senator BRANDEGEE. What does that average?

Mr. BROWN. That will average in that shop about $3 a month.

Senator BRANDEGEE. That would be about 10 cents a day.

Mr. BROWN. They are allowed at the rate of 75 cents a day for their excess time.

Senator BRANDEGEE. So that the money that the convict has to send home is simply his excess?

Mr. BROWN. Yes, sir.

Senator BRANDEGEE. What does that amount to?

Mr. BROWN. That will average in that shop, as I say, at least $3 a month. Some of them make much more than that.

The CHAIRMAN. It depends upon the pleasure of the convict in doing any extra time.

Mr. BROWN. Yes; and upon his ability and skill and his inclination. Now, we have in our prison at this time 3 men out of 1,160 that are incapacitated for work on account of insanity.

The CHAIRMAN. How many?

Mr. BROWN. Three; and we have sent to the insane asylum within the last year two. We think our success there is rather remarkable.

The CHAIRMAN. The percentage is very low.

Mr. BROWN. And our sick report is low. The health of the institution is very good.

The CHAIRMAN. Your legislature last year did not appropriate anything, did it?

Mr. BROWN. No, sir; we have no appropriation whatever for running the institution. If this bill should become effective at once, it would require an extra session of the legislature in order to make an appropriation. Not only that, but the State board of public works the first of this month met and fixed the tax rate for the next year without any consideration of the penitentiary.

The CHAIRMAN. Is there anything else you wish to call to the attention of the committee?

Mr. BROWN. I do not think of anything else.

The CHAIRMAN. Mr. Boyle, we would be glad to hear from you now.

Mr. BOYLE. I would like to ask Mr. Brown this one question before he leaves: If this bill were passed immediately, Mr. Brown, what would you do in the matter of the maintenance of your men?

Mr. BROWN. An extra session of the legislature would be required to appropriate money.

STATEMENT OF MR. EDWARD BOYLE, OF CHICAGO.

The CHAIRMAN. Will you kindly give your full name, Mr. Boyle?

Mr. BOYLE. Edward Boyle, of Chicago.

The CHAIRMAN. Where do you live?

Mr. BOYLE. Chicago, Ill. My address is 27 South La Salle Street.

The CHAIRMAN. What is your business?

Mr. BOYLE. Attorney; I represent corporations who have contracts with the State for the products of convict labor.

The CHAIRMAN. In the State of Illinois?

Mr. BOYLE. And other States; not at the present time in the State of Illinois.

Senator BRANDEGEE. Do you mean that you represent them all the year around, or just for the purpose of this hearing?

Mr. BOYLE. For the purpose of this hearing. Some of them, of course, I am representing in all matters all the year around.

The CHAIRMAN. We would be glad to have your views on the subject, and I would suggest that if you have anything that is in typewritten form or printed that you wish to submit, we will include it in the record for you. We want to obtain all your views on the measure, whatever they may be.

Mr. BOYLE. I had anticipated that, Senator, and I felt that I could simplify my work and make it much less arduous for you at this hearing if I asked permission to do that.

In considering this bill, the first question is the purpose, the next is the effect, the next the question of its policy, then the question of its merits, and next is the question of its constitutionality. I suppose we can assume that the purpose of this bill is to prevent the competition of convict labor with free labor. If there is any difference of opinion, we need only refer to bills which have been presented to Congress in former years, which are identical in language except as to title. I need only to refer to H. R. 4064, offered in the Sixtieth Congress, first session, by Mr. Kimball, entitled "A bill to permit the protection of labor and industries from the competition of convict labor and manufactures"; and regarding the present bill I need only refer to the Congressional Record, page 2927——

The CHAIRMAN. Of what date?

Mr. BOYLE. March 4, 1912, in which the author of the bill distinctly declares that to be its purpose.

Senator BRANDEGEE. The author of this pending bill?

Mr. BOYLE. Of this pending bill, Mr. Booher, of Missouri.

Senator BRANDEGEE. There is no claim that there is any other purpose to the bill, is there?

Mr. BOYLE. I think there is no claim. Very well, if we admit that, I can dispense with the reading of the discussion. I would be very glad, however, to refer that discussion of the bill in the House to this committee, as its constitutionality was there questioned and it was regretted by Members of the House that it had not been considered more carefully. The bill was not considered before the House committee. There were no hearings, at least on the part of those who are opposed to this kind of legislation.

The discussion above referred to is as follows:

INTERSTATE COMMERCE IN CONVICT-MADE GOODS.

Mr. HENSLEY. Mr. Speaker, I move to discharge the Committee on Labor from the further consideration of the bill (H. R. 5601) to limit the effect of the regulation of interstate commerce between the States in goods, wares, and merchandise wholly or in part manufactured by convict labor or in any prison or reformatory, and to suspend the rules and pass the bill.

The SPEAKER. The gentleman from Missouri [Mr. Hensley] moves that the Committee on Labor be discharged from the further consideration of House bill 5601, and that the rules be suspended and the bill passed. The Clerk will report the bill.

The bill was read, as follows:

"*Be it enacted, etc.*, That all goods, wares, and merchandise manufactured wholly or in part by convict labor, or in any prison or reformatory, transported into any State or Territory or remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in such State or Territory, be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise, had been manufactured in such State or Territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise."

The SPEAKER. Is a second demanded?

Mr. MANN. Unless some one opposing the bill demands a second, I will ask for a second.

Mr. HENSLEY. I ask unanimous consent that a second be considered as ordered.

The SPEAKER. The gentleman asks unanimous consent that a second be considered as ordered. Is there objection?

Mr. COVINGTON. I object.

Mr. MANN. This request is only that a second be considered as ordered.

Mr. COVINGTON. I withdraw my objection to that request.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER. The gentleman from Missouri [Mr. Hensley] is entitled to 20 minutes and the gentleman from Illinois [Mr. Mann] to 20 minutes.

Mr. HENSLEY. Mr. Speaker, this bill seeks to regulate interstate commerce between the States. When convict-made goods go from the State where they are made into another State this bill provides that they shall become subject to the law of the State which they enter. It seems to me there is no question about the merits of the bill, and that it ought to be passed.

We have something like 160,000 to 200,000 convicts engaged in making different articles of consumption in the prisons throughout our country, and when those prison-made goods go from the State where they are made into another State this bill requires that they become subject to the law of that State. I was selected by the Labor Committee to submit a report on this bill, which is in part as follows:

"There are a number of States in the Union which forbid by statute the placing on sale of articles of commerce made by the inmates of the penal institution of the State. It is probable that other States would enact similar laws were it not for the knowledge that such legislation would be nullified by the sale of prison-made goods brought in from neighboring States having no restriction as to the ultimate destination of their output. The manufacturers look upon the competition of prison-made goods from other States as a special grievance. In some of the States the manufacturing and labor interests have secured the enactment of laws prohibiting the manufacture, within the prisons of the State, of goods to be sold in competition with the product of free labor, and requiring that the goods made be for public use only. In such cases it is regarded as a peculiar hardship that convict-made goods from other States may be brought into the State and sold without restriction, thereby displacing free labor.

"The purpose of this bill is to give needed protection to those States that have declared themselves as opposed to the traffic in convict-made goods as well as those which have prescribed the kind of goods of that category that can be sold within the State or the conditions under which the sales can be made.

"This bill does not attempt to place any limitation upon the rights of the several States to employ their convicts in productive effort. The convict product as a whole is very small when compared with the entire product of free labor in the United States, but the employers of free labor and their workmen unite in affirming that when any convict-made product is placed in competition with the product of free labor the market becomes demoralized, even a small sale affecting prices far out of proportion to the amount of the sale. Every State objects to being made the market for convict-made goods produced in other States. And reviewing the general question of convict labor as a competitive factor, it may be said that manufacturers consider such competition unfair and ruinous, demoralizing to markets and business stability, compelling the reduction of prices below a fair margin of profit and often even below the cost of production. Wages are forced to the lowest limit in a vain effort to lower the cost of production to that of the prison contractor, until in some cases it has resulted in a deterioration of quality of material used and in others an entire abandonment to the prisons of the manufacture of certain grades of goods.

"Those States which have no restrictive laws in regard to the sale of prison-made goods will be in no wise affected by the legislation here proposed, while all that seek to interdict such sale within its own boundaries or which insist upon distinguishing labels or standards of quality will be furnished the protection of which they stand in dire need.

"The effect of prison-made goods on business can not be arrived at by any calculation of percentages, but it is safe to say that this competition is most severely felt by a class least able to bear it."

Mr. CANNON. Will the gentleman allow me?

Mr. HENSLEY. Yes.

Mr. CANNON. I see this bill provides "that all goods, wares, and merchandise manufactured wholly or in part by convict labor, or in any prison or reformatory, transported into any State or Territory or remaining therein for use, consumption,

sale, or storage shall, upon arrival and delivery in such State or Territory, be subject to the operation and effect of the laws of such State or Territory to the same extent" as the State law applies to convict-made goods manufactured within that State.

As I understand the bill, the interstate commerce is complete by delivery of the goods. That is, the commerce along the States is complete before the convict-made goods which come into the State become subject to the law of that State.

Mr. HENSLEY. The interstate commerce becomes complete by delivery to the consignee.

Mr. CANNON. By delivery to the consignee, and then the State law attaches.

Mr. HENSLEY. Yes.

Mr. CANNON. It seems to me that the State law would attach without this legislation.

Mr. HENSLEY. I will say to the gentleman from Illinois that some do make the argument that the State laws will attach, but the study I have made of the subject convinces me that perhaps the State law does not attach in all instances.

Mr. CANNON. I doubt very much whether it is in the power of Congress to make police regulations for a State. The only power we have is to regulate commerce among the States. I see no objection to the enactment of the bill, but I did want to make this remark in connection with the consideration, namely, that the commerce begins in one State and ceases in the other by delivery to the consignee. It is plain to me that under the police powers of the State they could make any regulation they choose touching the product found there, the interstate commerce having been accomplished. With that explanation I have no objection to the bill as far as I am concerned.

Mr. HUMPHREYS of Mississippi. Mr. Speaker, replying to the gentleman from Illinois, if the gentleman from Missouri will permit, I think the gentleman from Illinois is mistaken. I think the power of Congress attaches to the article that is a part of interstate commerce as long as it is in the original package to the extent that the consignee may dispose of it even after arrival in the State. It has been quite a long time since I have had occasion to investigate the matter, but my recollection is that it was in the case of Brown against Maryland, quite a number of years ago, the court held that the article might not only be shipped into the State and delivered to the consignee, but as long as it was in the original package it would not be subject to the laws of the State.

So in the Wilson bill it was attempted, as the gentleman remembers, to withdraw the power of Congress from interstate commerce in intoxicating liquors and to provide that upon arrival in the State the liquor would be subject to the police power of the State.

Mr. CANNON. And delivered.

Mr. HUMPHREYS of Mississippi. No; the court read that into it, as I remember it. The court, as I recollect, held that that "arrival" in the statute meant upon arrival and delivery. Now, this bill proposes, following the exact language of the court, that after it arrives and is delivered, although it be in the original package, Congress will permit the States to step in with their police powers, notwithstanding the original package, and say that they will forbid the sale after the delivery.

Mr. CANNON. If the gentleman from Missouri will allow me, we are taking a good deal of his time——

Mr. HENSLEY. That is all right.

Mr. CANNON. I recollect the decision of the court which the gentleman refers to, and also the enactment of the Wilson law. The decision of the court was that the original package was not subject to State regulation until it was sold, but the court held, as I recollect, that when the act of commerce from one State to another was completed by delivery to the consignee in the State to which the shipment was made, that then under that legislation the State had the right under the police powers of the State to seize it, whether it was in the original package or not.

Mr. HUMPHREYS of Mississippi. No; if it was in the original package they could sell it. Now, this bill withdraws that limitation and permits the police powers of the State to apply before the sale, and to begin to apply upon the delivery of the goods to the consignee, notwithstanding they are in the original package. Of course, if the original package is destroyed, then the State law would attach at once, but this will permit it to attach even if it is in the original package.

Mr. CANNON. I understand it is so in the Wilson law, but so that I may not be misunderstood I want to say that convict-made goods made in Illinois, for instance, and shipped into Iowa could not be seized the moment that they crossed the dividing line between Iowa and Illinois, but they must proceed to the consignee and be delivered to the consignee, and then they are subject to the police laws of the State itself, and subject to seizure or any other disposition that the State may desire to provide.

Mr. HUMPHREYS of Mississippi. Not until an act of Congress says that. As long as it is in the original package, it can not be seized. The purpose of this bill is to enable the power of the State to attach, although it may be in the original package.

Mr. KENDALL. It is to enable the State of Iowa to legislate on the subject respecting the shipment from Illinois into that State whenever it reaches Iowa in the original package.

Mr. HUMPHREYS of Mississippi. Without this legislation I think the power of the State would not apply.

Mr. KENDALL. Without this legislation the State of Iowa would not have any authority to enact the legislation.

Mr. AUSTIN. If the gentleman will allow me, I would like to inquire if this bill would cover convict-mined coal? Our State is very much interested in that subject, because they are using the State convicts to mine coal and selling it in competition with coal mined by miners.

Mr. HENSLEY. I do not think the language of this bill would permit it to be applied to coal at all.

Mr. WILLIS. Will the gentleman state why? The bill says "all goods, wares, and merchandise manufactured wholly or in part." Does not the gentleman think the application of labor to the raw material of coal is in a sense manufactured goods?

Mr. KENDALL. Mr. Speaker, will the gentleman yield for a suggestion?

Mr. HENSLEY. I would like very much to have it so apply.

Mr. KENDALL. I am very much in sympathy with this legislation, but I should like to see it perfected to make it apply to the situation suggested by the gentleman from Ohio [Mr. Willis].

Mr. WILLIS. Will the gentleman modify his original request so as to insert the words "or produced"?

Mr. HENSLEY. On that proposition I would have to confer with the author of the bill.

Mr. AUSTIN. If the gentleman would accept the word "coal," I think it would be satisfactory. If not, I should have to object to the consideration of this bill.

Mr. KENDALL. The purpose of this committee is to formulate legislation which will give the respective States the right to control where convict goods are sought to be brought into competition with goods produced by free labor, and it is a very laudable purpose, as I view it. What we on this side are seeking to do by suggestions that have been advanced is this: The gentleman has provided here that all goods, wares, merchandise, manufactured wholly or in part by convict labor, shall, upon the entrance into a given State, be subject to the legislation of that State, and what we want to do is to extend this provision to include coal that may be mined by convict miners.

Mr. BOOHER. Why include coal? That is not a manufactured article.

Mr. KENDALL. It is produced, and it is the result of labor that has been applied to it. There is no more reason why a garden tool made by a convict laborer in Illinois should become subject to legislation in Iowa that there is why coal mined by convict labor in Tennessee should become so subject to legislation in Iowa.

Mr. BOOHER. I think there is all the difference in the world. Nobody ought to prevent people from getting coal. It is a necessary thing, and all people need it in the winter time. We all have to burn it in cold weather.

Mr. KENDALL. Coal is no more of a commodity than clothes.

Mr. BOOHER. That is true, but it is of a different character, and the labor upon it is of a different kind. It is used in different ways.

Mr. KENDALL. The gentleman does not mean to say there is any difference in the quality of labor applied to the making of garden tools than there is in the mining of coal?

Mr. BOOHER. Yes; there is. This bill is to apply to manufactured goods, such as clothing, overalls, and boots and shoes. The garment industry gives employment to women and girls of the working class and gives fair remuneration for their labor. They do not mine coal. It is to prevent that class of people being placed in competition with convict labor. I am for the protection of free labor.

Mr. KENDALL. I am not quarreling with the gentleman from Missouri on that proposition, but I see no reason why, if we are to extend the provisions of this bill to include the people engaged in the manufacture of overalls—and I am in favor of that—why we should not also extend it to include the men who are engaged in mining coal.

Mr. AUSTIN. Or cutting lumber.

Mr. BOWMAN. Mr. Speaker, will the gentleman yield?

Mr. HENSLEY. Yes.

Mr. BOWMAN. I would like to ask the gentleman in charge of the bill whether there would be any more reason for permitting coal produced by free labor to compete with coal produced by convict labor or the reverse?

Mr. HENSLEY. I am forced to say to the gentleman that so far as I am concerned I would like very much to accept the amendments, but I must defer to the gentleman who introduced the bill upon that proposition.

Mr. COOPER. Would the gentleman agree to this amendment: "That all goods, wares, merchandise, manufactured, produced, or mined, wholly or in part," and so forth?

Mr. CLARK of Florida. He said he would not.

Mr. HUMPHREYS of Mississippi. Mr. Speaker, let me make this suggestion to the gentleman, that there would be no objection to the sale of coal mined by convicts unless the legislature of the State into which it is shipped should choose to impose some burden upon it; so that we leave it at last to the States, and if the States are in favor of cheap coal, they do not have to pass any legislation, although we give them the power to do it, and therefore I can see no special objection to it. In my State they work the convicts very largely on cotton plantations, and this would affect that, because any State that wanted to could impose a burden on the cotton that is so produced. This legislation does not impose the burden. It is left at last to the State. Personally I believe the convicts could be much better employed in building good roads than in producing cotton or working in the coal mines.

Mr. BOOHER. This bill refers only to manufactured goods. It does not pretend to touch coal, lumber, or anything else, and, so far as I am concerned, I shall not oppose putting any amendment to the bill that will protect free labor from competition of cheap convict labor. The place to work convicts is on our roads and highways.

Mr. WILLIS. Will the gentleman yield?

Mr. BOOHER. Yes.

Mr. WILLIS. The object of this bill, I understand, is to protect free labor against convict labor. Now, why is it not just as desirable to protect the free labor that is at work in the mine as it is to protect the free labor that is at work in a factory? The principle of the thing is the same.

Mr. BOOHER. I agree with the gentleman. There is no difference in principle.

The SPEAKER. The time of the gentleman from Missouri has expired.

Mr. MANN. Mr. Speaker, the first bill that is on the Calendar of Motions to Discharge Committees is a bill introduced by the gentleman from New Jersey [Mr. Gardner], placed upon the Calendar of Motions to Discharge Committees by the gentleman from South Dakota [Mr. Burke], which is identical to the bill now under consideration, so that if the Discharge Calendar has done nothing else it has forced that side of the House to report a bill for passage on this convict-labor-goods proposition, and my only regret is that the gentlemen are not willing to agree to a proposition to include mines——

Mr. BUCHANAN. Will the gentleman yield?

Mr. MANN. When I finish this statement I will. I do not propose to carry on the same sort of burlesque that has been carried on here. I will withdraw the word "burlesque"; I do not mean it that way, and will say opera bouffe. Mr. Speaker, so far as we have the power to control the shipment of convict-made goods from one State to another to prevent competition of convict-made goods with goods made by free labor, I am in favor of exercising the power. I shall vote for this bill, but with some regrets that it has not been examined more carefully as to its constitutionality. It follows the law with reference to the shipment of liquors into the States, and because the law that it follows concerning liquors was held to be constitutional, therefore they assume that this bill is constitutional. Liquor is an article that has to be judged by itself. How can you judge coal as to whether it is made by convict labor or by free labor by viewing the coal? How can you judge of boots and shoes, unless they are labeled as to how they are made, when you come to apply the law of a State? It is a question, in my judgment, as to whether this is a proper way or the only way in which you can can get at the evil. But it is true that certain penitentiaries of the country are now engaged in the making of certain classes of products for the purpose, in the main, of shipping them out of the State. That is especially true of binding twine and especially true of boots and shoes and especially true of a number of other classes of goods where they are shipping them into other States for the purpose of coming into competition with free labor. We all know it is quite desirable that convicts in penitentiaries shall have something provided for them to do. They can not remain in idleness under any humanitarian form of government, but when they go into the manufacture of goods that come in competition with free labor it means depreciation of price, it means in that case precisely the same thing that the importations under a cheap tariff means, that goods are brought in from a foreign country to compete with the goods made by free labor here, and there is no distinction in principle between making the transportation of convict-made goods free in this country and making the bringing in of foreign-made goods free to enter in competition with our goods. [Applause on the Republican side.] I am opposed to both propositions and in favor, as far as possible, of upholding——

Mr. BATES. The dignity of labor.

Mr. MANN. As my friend from Pennsylvania suggests, the dignity of labor, but the dignity of labor is very little satisfaction to the man who labors unless he sees a reward for his labor which permits him to live in happiness and comfort. [Applause on the Republican side.]

Mr. HUMPHREYS of Mississippi. Will the gentleman permit me a question?

Mr. MANN. Certainly.

Mr. HUMPHREYS of Mississippi. I ask this for information. Is it not the law now that convict-made goods have to be labeled as such before they enter into interstate commerce?

Mr. BOOHER. I will say that some of the States have that kind of a law, but very few.

Mr. HUMPHREYS of Mississippi. I want to know if we have not such a law of the United States in regard to that?

Mr. MANN. I do not recall it.

Mr. WILLIS. There is a law of some States which requires the goods to be branded before they can be carried from one State to another.

Mr. HENSLEY. I will say to the gentleman, if he will permit, there are four or five States that have regulations of that character that require convict-made goods to be branded as such before they enter into interstate commerce.

Mr. MANN. I will say this, Mr. Speaker: Take a railroad company that is engaged in the transportation business; we have had numerous attempts to penalize a railroad company if they accepted certain classes of goods.

It is perfectly patent to the simplest mind that the railroad official who accepts the goods—the railroad agent—can not be expected to trace the goods back to their origin and can not know, unless the goods show on their face, what these goods are or where they come from. And all attempts to make penalties of that sort have failed to be enacted into law up to date, I think, simply because of the manifest impossibility.

Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman has 13 minutes remaining.

Mr. MANN. I yield four minutes to the gentleman from Texas [Mr. Slayden].

Mr. SLAYDEN. Mr. Speaker, I have a peculiar and rather personal interest in this bill. When I came to Congress, in the spring of 1897, I was very much impressed with the importance of doing something to prevent the transportation of convict-made goods from one State to another to compete with goods made by free labor. After struggling with apprentice hands I wrote a bill, which is this bill, with the exception of two words. I forgot that reformatories were penal institutions. In either the last session of the Fifty-fifth Congress or the first, perhaps, of the Fifty-sixth Congress, a bill was reported from the Committee on Labor by the gentleman from New Jersey [Mr. Gardner] which was precisely like the bill that I had offered in the same Congress except it had the words "or reformatories" added. The bill of the gentleman from New Jersey was passed by the House but did not become a law. In the next Congress I reintroduced the bill, and on that occasion I "took," as territory has been taken in time, Mr. Gardner's words "or reformatories." And in four or five subsequent Congresses I introduced precisely this same bill. I did so because, as I say, I had a keen interest in free labor and wanted to prevent the competition of convicts. I may say also that I was not beyond the temptation of trying to do something that would make the labor vote friendly.

But it was a just and proper measure. And, looking still further afield, I wanted to compel States that used penal slaves for the manufacture of goods to consume their own products. I wanted all States forced finally to the putting of their convicts upon the highways, where they would compete less with honest workingmen and do more good to the community at large. [Applause.]

Among the convict-made goods that were coming into the State of Texas when I was first elected to Congress and doing great harm to the free labor of that State were boots and shoes made in prisons in the State of Missouri, and that was the particular and glaring instance that I had in mind when I drafted my first bill.

I am heartily in favor of the idea. I hope that the bill will pass. I sincerely hope that it will be found constitutional; I hope it will accomplish the purpose which the gentleman from Missouri [Mr. Booher] has in mind; and that it will relieve honest free labor from the competition of penal slaves. I hope and I believe that without any amendment this bill, with the language that it now carries, will protect honest miners against the competition of penal slaves in coal or other productions. [Applause.]

Mr. MANN. Mr. Speaker, I yield two minutes to the gentleman from Minnesota [Mr. Anderson.]

Mr. ANDERSON of Minnesota. Mr. Speaker, I think perhaps some explanation of my objection to this bill when it was on the Unanimous Consent Calendar is due the House. I do not know whether this bill is a good one or not. I have very serious doubts as to whether many Members in the House know that. But I was very positive of one thing—that a bill involving a constitutional question, a bill involving investments of a great many of the States in twine plants and in various other manufacturing establishments in which convicts are employed ought not to be brought up here on the Unanimous Consent Calendar. My purpose in objecting to its consideration on that calendar was that I desired to give notice that that calendar must be preserved for the motions and bills which ought properly to come up under it. This bill ought to be considered upon a calendar where we could have ample opportunity for debate. It ought not to be brought up here by unanimous consent. It ought not to be brought up here on a motion to suspend the rules and pass it as it is now. I have no objection to the bill, so far as I know, but I would like to see a reasonable opportunity for debate in an orderly manner.

Mr. MANN. Mr. Speaker, I yield three minutes to the gentleman from Tennessee [Mr. Austin].

Mr. AUSTIN. Mr. Speaker, we have had in my State—Tennessee—and especially in the eastern end of it, convict labor in the mines for about 30 or 40 years. We have about 1,500 convicts mining coal and about a thousand within the walls of the penitentiary in the various manufacturing plants. Every dollar's worth of convict coal and every article manufactured in the prison shops come in direct competition with the same articles produced by free or honest labor. This bill seeks to give relief to those men who are engaged in the manufacturing lines, and if there is a class of people that need and deserve relief along these lines it is the men who work in the coal mines and who are engaged in a hazarduous employment.

Now, when the last panic was on, known generally as the "Roosevelt panic" [laughter] we had 5,000 free miners, honest miners, walking the camps daily without employment for months. In that campaign I went into a mining camp where they had three days' labor in three months, but right over at Brushy Mountain, where the State of Tennessee, to its disgrace and shame, was employing 1,500 convict miners, these convicts were working every day except Sundays. And when the railroads in Georgia invited bids for their annual supply of fuel in competition with the bids of men who represented companies that were giving employment to honest, law-abiding miners, who had families to support and who bore the burdens and responsibilities of citizenship, the State of Tennessee's bid was far below the bid of any private corporation, and as a result during those trying times the convict miners of Tennessee were always busy, while the honest, law-abiding miners were walking the streets of the mining villages hungry and their families were in need and their children were barefooted, and many even unable to attend the public schools.

Mr. BOOHER. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Tennessee yield to the gentleman from Missouri?

Mr. AUSTIN. I do.

Mr. BOOHER. Whose panic did I understand the gentleman to say was the panic of 1907? [Laughter on the Democratic side.]

Mr. AUSTIN. I said the so-called Roosevelt panic, named after a candidate that the Democrats seem very anxious that out part shall select at Chicago, but whom we do not propose to nominate. [Laughter on the Republican side.]

Mr. AKIN of New York. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Tennessee yield to the gentleman from New York?

Mr. AUSTIN. Yes; I will, if there is not any dinner pail in it. [Laughter.]

Mr. AKIN of New York. I desire to ask the gentleman if the dinner pail during the Roosevelt administration was not a little larger than it is now under the present administration?

Mr. AUSTIN. I only know that the dinner pail was not reduced in size until the Republican Party lost control of this House and the tariff campaign of the gentleman on the other side began. [Applause on the Republican side.]

The SPEAKER. The time of the gentleman has expired.

Mr. MANN. Mr. Speaker, I yield one minute to the gentleman from New Jersey [Mr. Hughes].

Mr. HUGHES of New Jersey. Mr. Speaker, it gives me a great deal of pleasure to see the time arrive when the House of Representatives gets an opportunity to pass upon this particular piece of legislation. Since I first came here I have been engaged in an effort to get this bill before the House for consideration. Up to this time, by one means or another, it has been possible to prevent it.

I do not suppose that there are many Members of the House who know how generally the convict-made goods enter into the affairs of the people of this Nation. I know I was almost horror-stricken to find at one time that the United States Government itself was trafficking in convict-made goods and was buying mail bags from the penitentiary of the State of New Jersey and had been doing it so long that the people who were engaged in that business in private enterprise had been driven out of it by the convicts of the State penitentiary doing work for the Government of the United States. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. MANN. Mr. Speaker, have I two minutes remaining?

The SPEAKER. The gentleman has three minutes.

Mr. MANN. Mr. Speaker, I yield to the gentleman from Kansas [Mr. Jackson] one minute.

The SPEAKER. The gentleman from Kansas [Mr. Jackson] is recognized for one minute.

Mr. JACKSON. Mr. Speaker, I am in hearty accord with all that has been said about this bill by the gentleman from Illinois [Mr. Mann]. I am heartily in favor of the bill and the object that is sought to be obtained by it, and I shall vote for it; but I have very grave doubts as to its constitutionality.

I have always believed that the power of Congress over interstate commerce was supreme, and if it is, this bill is constitutional. If I had been going to draft the bill, I should have said that these commodities should have the protection of interstate shipments removed from them. I would have sought to remove the interstate character of the shipments. I believe that kind of a law would be constitutional, provided Congress has the power to do that upon all commodities. The courts have sustained laws removing the interstate character of intoxicating liquors, powder, dynamite, wild game, and other commodities which are peculiarly subject to the local police laws, but they have never gone so far as this law, including commodities of common use.

The SPEAKER. The time of the gentleman has expired.

Mr. MANN. Mr. Speaker, I yield one minute to the gentleman from Pennsylvania [Mr. Bates].

Mr. BATES. Mr. Speaker, I am in favor of this legislation for the additional reason that it will encourage the authorities of our municipalities, our counties, and our States to put the men to work who are now in our penal institutions. There has been a prejudice against such labor on account of the fact that the product of it comes into competition with paid labor. I believe every man who goes into a penal institution and idles away his time comes forth a worse man than he went in and I believe every man who goes into a penal institution and goes to work comes out a better man. We are all sentenced to work. I believe that work is a corrective and that all men who are sent to jails and penal institutions ought to be kept at work. The passage of this bill will make uniform and systematize the disposal of the products of convict labor, so that men under sentence can be put to work and at the same time the interests of men who work for wages will not be hurt or jeopardized.

Mr. MANN. I yield the balance of my time to the gentleman from Ohio [Mr. Willis].

Mr. WILLIS. Mr. Speaker, the gentleman from Kansas [Mr. Jackson] seems to be in doubt about the constutionality of this measure. I rise simply to call his attention to a case that he may not have examined, in re Rahrer, reported on page 545 of 140 United States, which seems to be on all fours with this matter here, and I believe there is no doubt about the constutionality of this measure.

In the second place, I am in favor of this bill because I believe it is based upon a right principle. I believe that a question of this kind ought to be settled by the local authorities. This simply says that where a State has made regulations concerning the sale of convict-made goods those regulations shall apply. It seems to me that is a reasonable and proper principle.

In the third place, I am in favor of this bill because it affords a measure of protection for free labor against cheap convict labor.

I am in favor of the bill and hope it will pass.

The SPEAKER. The time of the gentleman has expired. All time has expired.

Mr. HENSLEY. I ask unanimous consent to amend the bill in line 3, page 1, following the word "manufactured," by inserting a comma and the words "produced or mined"; also, on page 2, in line 2, following the word "manufactures," to insert a comma and the words "produced or mined."

The SPEAKER. The gentleman from Missouri asks unanimous consent to modify his motion in a manner which the Clerk will report.

The Clerk read as follows:

"Page 1, line 3, after the word 'manufactured,' insert a comma and the words 'produced or mined.'

"On page 2, in line 2, after the word 'manufactured,' insert a comma and the words 'produced or mined.'"

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER. The original proposition is modified in the respect named. The question is, Shall the rules be suspended and the bill passed?

The question was taken; and two-thirds voting in the affirmative, the rules were suspended, and the bill was passed.

The next question is the effect of this legislation. It will effect exactly what it is intended to effect. It will create a blockade of all goods made, in whole or in part, by convict labor. It is well understood that in commerce manufacturers sell to the jobbers in the great markets of the country. These jobbers distribute to the retailers and the retailers sell to the consumers, and if this bill becomes a law the customers of all the manufacturers who have products made in whole or in part by convict labor will very properly refuse to buy. This will be the effect without any regard to whether the law is constitutional or unconstitutional, and this effect will cause many companies who have made legal contracts with their States great loss and in many cases financial embarrassment.

The CHAIRMAN. As a matter of fact, generally speaking, these contracts made by manufacturers with State authorities all have recession clauses, do they not?

Mr. BOYLE. They have that recession clause which has been carried because a law of this nature has been before Congress for probably more than 20 years.

The CHAIRMAN. Therefore they are protected against any damage the State might undertake to recover from them.

Mr. BOYLE. They are protected against that damage, but we understand that these companies have to do as other manufacturing companies do; they have to send their ships out to sea at the proper season to buy the raw material and they have to carry large stocks to be distributed at the proper season.

The CHAIRMAN. That damage can be mitigated by amending the bill to go into force at some future time, can it not?

Mr. BOYLE. It could if the bill were amended to take effect at some future time. We must admit that, in which case the contractors would not be so much the sufferers as the States themselves.

Senator BRANDEGEE. What it the longest contract you know of?

Mr. BOYLE. The longest contract I know of is five years, with, in many cases, the permission of an extension for another five years. There may be contracts for eight years, but I do not know of them.

While discussing the effect of this law, it is proper to make a subhead and discuss the confusion that this law would create at the present time. It is assumed that if this law were passed the boycotting acts of the several States would then take effect, but there would be other and more serious effects. For instance, no one can tell what would be the status of convict-made goods in the State of New York, it being provided, as you know, that all goods made in the penal institutions shall be furnished to the other penal institutions, the State, and its political divisions at cost. And again, in the State of Pennsylvania it is provided that 5 per cent only of the inmates shall be worked on brooms and brushes, 20 per cent on mats and matting, and 10 per cent on all other industries which will not come in competition with the free labor of the State, and that all goods man-

ufactured in the State of Pennsylvania must be by hand, machinery being eliminated.

So much briefly for the effect in commerce. Then we next pass to the merits of this proposed legislation. I understand that the Federation of Labor has, during all the years that these bills have been before Congress, favored them, and very properly so, because they are intended to be in conformity with the policy of organized labor. I do not understand, however, that they have looked upon them as the most vital laws that they have asked for. I appreciate that the agitation before Congress during the past 20 years for these laws has done much more to reduce the effect of this convict-labor competition with free labor than the passage of the laws would have done, for the reason that I am perfectly certain that as soon as a law of this sort is passed it will be declared unconstitutional in every State in the Union.

It is a fact that all of these boycotting laws have already, when tested, been declared unconstitutional either by a nisi prius court or a court of record. Since the last hearing on this kind of legislation, the State of New York, in a very important decision by the supreme court in its appellate division, which decision has been affirmed by the appellate court, has declared against the entire policy and principle to which I will refer later.

Senator BRANDEGEE. What is the name of the case?

Mr. BOYLE. The People—Phillips *v.* Rayneys, volume 120, page 1053 of the New York Supplement. The decision was rendered by the supreme court, appellate division, and then affirmed by the New York Court of Appeals since the hearings were had in the House on this legislation. I wish to refer to that, and to simplify the matter I have made an entire copy of the decision which I can put into the record.

Senator BRANDEGEE. Is that an unanimous decision?

Mr. BOYLE. It is an unanimous decision. I wish to discuss it briefly before you at the proper time.

EXHIBIT B.

Supreme Court, Appellate Division, First Department, January, 1910. George L. Ingraham, P. J.; Frank C. Laughlin, John Proctor Clarke, Francis M. Scott, Nathan L. Miller, J. J.

People of the State of New York, ex rel. Louis Phillips, respondent, *v.* Edward Raynes, a peace officer of the county of New York, the People of the State of New York, appellants.

APPEAL FROM AN ORDER OF THE SPECIAL TERM DISCHARGING THE RELATOR FROM CUSTODY UPON A WRIT OF HABEAS CORPUS.

Edward H. Letchworth, deputy attorney general, of counsel (Edward R. O'Malley, attorney general), for appellants.

Mortimer Fishel, for respondent.

CLARKE, J.: The relator, a resident of the State, who owned and conducted a store in the city of New York, was arrested upon a warrant issued by a city magistrate for an alleged violation of the provisions of 190 of the labor law, being chapter 31 of the consolidated laws, chapter 36 of the Laws of 1909, the charge being that not having a license to sell convict-made goods, wares, and merchandise, he had sold in the store 11 boy's shirts for $2.50, which said shirts were convict made in the Illinois Penitentiary, Joliet, Ill.

The said section is as follows:

"No person or corporation shall sell, or expose for sale, any convict-made goods, wares, or merchandise, either by sample or otherwise, without a license therefor. Such license may be obtained upon application in writing to the comptroller. * * * Such application shall be accompanied with a bond, executed by two or more responsible citizens, or some legally incorporated surety company authorized to do business in this State, to be approved by the comptroller, in the sum of $5,000, and conditioned that such applicant will comply with all the provisions of law relative to the sale of convict-made goods, wares, and merchandise. Such license shall be for the term of one year unless sooner revoked. Such person or corporation shall pay, annually, on or before the 15th day of January, the sum of $500 as a license fee into the treasury of the State, which amount shall be credited to the maintenance account of the State prisons. Such license shall be kept conspicuously posted in the place of business of such licensee."

One hundred and ninety-two provides for a verified statement by the licensee to the secretary of state each year setting forth the names of the persons, agents, wardens, or keepers of the prisons using convict labor with whom he has done business and the name and address of the person or corporation to whom he has sold goods, wares, and merchandise and in general terms the amount paid to each of such agents, wardens, or keepers for goods, wares, or merchandise, and the character thereof.

One hundred and ninety-three provides for branding or labeling convict-made goods and that no convict-made goods, wares, and merchandise shall be sold without such brand or label. One hundred and ninety-four makes it the duty of the commissioner of labor to enforce the provisions of this article, to advise the district attorney of violations, who shall at once institute prompt proceedings to compel compliance with this article and secure convictions for violations. Upon the conviction of a person or corporation for a violation of this article one-half of the fine recovered shall be paid and certified by the district attorney to the commissioner of labor, who shall use such money in investigating and securing information in regard to violations of this chapter and for securing such convictions.

Six hundred and twenty of the penal law provides that "A person who (1) sells or exposes for sale convict-made goods, wares, or merchandise without a license therefor, or having such license does not transmit it to the secretary of state the statement required by article 13 of the labor law, or (2) sells, offers for sale, or has in his possession for sale any such convict-made goods, wares, or merchandise without the brand, mark, or label required by article 13 of the labor law, or (3) removes or defaces or in any way alters such brand, mark, or label, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than $1,000 nor less than $100, or by imprisonment for not less than 10 days, or by both such fine and imprisonment."

Chapter 698 of the Laws of 1894 provided that "Any person having in his possession, for the purpose of sale or offering for sale, any convict-made goods manufactured in any State other than the State of New York, without being branded or labeled" as specified in the act, should be guilty of a misdemeanor. This act was declared to be unconstitutional in People *v.* Hawkins (85 Hun, 43), because it discriminated between convict-made goods of other States and those made in the State of New York, the court saying: "Commerce among the States can not be said to be free when a commodity is, by reason of its foreign manufacture, subjected by a State legislature to discriminating regulations or burdens."

The said statute was repealed by chapter 931 of the Laws of 1896, which provided that all goods made by convict labor (which included those made in the State of New York), before being exposed for sale or sold, shall be labeled, marked, or branded as in the act mentioned. This act was declared to be unconstitutional. (People *v.* Hawkins, 20 App. Div., 494; affirmed, 157 N. Y., 1.) In the court of appeals Judge O'Brien condemned the law upon the ground that it was in conflict with the constitution of this State, since it interfered with the right to acquire, possess, and dispose of property, and with the liberty of the individual to earn a living by dealing with the articles embraced within the scope of the law; that it was an unauthorized limitation upon the freedom of the individual to buy and sell all such articles, subject only to the law of supply and demand, and the legislation was not within the scope of the police power; and also upon the ground that it was in violation of the commerce clause of the Federal Constitution. "A State law which interferes with the freedom of commerce is not saved by the fact that it applies to all States alike, including the State enacting it. Interstate commerce can not be taxed, burdened, or restricted at all by State laws, even though operating wholly within its own jurisdiction. If it is a regulation of commerce, the law relates to a subject within the exclusive jurisdiction of Congress, upon which the State has no power to legislate. It matters not whether the regulation be under the guise of a law requiring a municipal license to sell certain goods, or a health law requiring inspection of the article, or a label law, as in this case,

requiring the article to be branded or labeled. When they operate as burdens or restrictions upon the freedom of trade or commercial intercourse they are invalid. * * * This statute manifestly discriminates against the sale of goods made in a prison in the State of Ohio by a certain class of workmen, and in favor of the same articles when made outside a penal institution and by free labor. * * * Trade and commerce between the States must be left free. The Constitution intended that it should be affected only by natural laws and the ordinary burdens of government imposed through the exercise of the taxing power equally on all property.

"The police power of a State can not be used to depress the price or restrict the sale of articles of commerce merely because they happen to be made in a prison or by a certain class of workmen, while the same articles made in some other place and by free labor are left untouched by the regulation. A citizen of this State who happens to buy goods made in a prison in Ohio has the right to put them upon the market here on their own merits, and if this right is restricted by a penal law, while the same goods made in factories are untouched, such a law is a restriction upon the freedom of commerce, and the objection to it is not removed by the fact that it may have been enacted in the guise of a police regulation. The validity of such a law is to be tested by its purpose and practical operation without regard to the name or classification that may have been given to it." It was upon the latter ground that the three other judges of the court who made up the majority concurred.

In 1897 the labor law, chapter 415, was passed, and paragraph 50 thereof provided for the licensing of dealers in convict-made goods and is the source of the statute now under consideration. The two former acts, which had been declared to be unconstitutional, provided for the branding of the goods. The obvious purpose was to prevent the buying and selling of such goods. The act now under consideration, for the same purpose, brands the dealer. It requires him to take out a license which he must display conspicuously in his place of business, give a bond in the sum of $5,000, pay an annual license fee of $500, and make a verified annual statement to the secretary of state, which shall disclose his every transaction in such goods.

It is clear that absolute prohibition alone could be more efficacious in preventing dealing in such articles. It is claimed that these provisions are not repugnant to the commerce clause of the Federal Constitution, and if so, that that point can not be raised in this case because the relator is a resident of the State of New York and the goods which it is alleged he sold were part of the general merchandise of the State, and therefore do not constitute interstate commerce. He was not a drummer or an agent from another State, undertaking to buy or sell within this State; the sale was not of goods located in another State to arrive and be delivered in this State, nor were they in the original package. It is the law that a tax upon a business or occupation of a resident of a State conducted within that State is valid, and that when goods have been brought within the State and have entered into the body of the merchandise therein situate, they lose their character as articles of interstate commerce and become subject to taxation within the State. And it is further true that the Supreme Court of the United States has held that a law taxing drummers and commercial travelers, so far as it affects only the residents of a State, can not be questioned by such resident. "Unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all." (New York ex rel. Hatch *v.* Reardon, 204 U. S., 152, and cases there collated.)

So that, looking at this statute as a licensing act upon an occupation under the taxing power of the State, it would be difficult to maintain that it violated the commerce clause of the Federal Constitution.

The appellant claims that it is valid as a tax law—that its purpose is to raise revenue and that the revenue so raised is by the statute to be applied to the maintenance of the State prisons and that as the taxing power of the State is not restricted by the Constitution, the legislature is to determine the objects of taxation, the remedy for unwise tax laws being lodged in the people at the polls and not in the courts.

It is not true now that the power of taxation is without constitutional restraint for the fourteenth amendment of the Constitution of the United States provides "That no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

While the taxing power may be extended to all kinds of persons and property within the State, or may be restricted to certain kinds, or limited area (People ex rel. Griffin *v.* Mayor, etc., of Brooklyn, 4 N. Y., 419; People ex rel. Crowell *v.* Lawrence, 41 N. Y., 137; Gordon *v.* Cornes, 47 N. Y., 608; Genet *v.* City of Brooklyn, 99 N. Y., 291; Cayuga Co. *v.* State, 153 N. Y., 279; Gubner *v.* McClellan, 132 App. Div., 716), it is subject to the

one great rule that all persons, under like circumstances, shall be treated in the same way. Persons and property may be classified for taxation, but such classification may not be arbitrary, unreasonable, or capricious. (Matter of Pell, 171 N. Y., 48.) So that, if we ignore in this statute its obvious purpose, writ so plain that all may read, namely, to prohibit by onerous and exasperating restrictions, under the guise of regulation, the buying and selling within the State of convict-made goods, and treat it purely as a revenue or tax law, the inquiry is, Is its classification unreasonable and capricious?

The appellants say that it does not conflict with the rule of equality; that it puts into one class all who deal in convict-made goods and treats them all alike, and that it is a reasonable classification. Let us see. That classification is based upon the origin of the goods dealt in, without regard to the quality or character or nature of the goods themselves. Clothing, household furniture, shoes, scrubbing brushes, brooms, harness, anything that can be made by hand or machinery, falls within one classification, provided the origin is the same.

Substitute a State for a prison and no one would be willing to say that a law which required all persons who might deal in goods, wares, and merchandise made in New Jersey would be valid, or, if it be objected, that that would be a direct violation of the Federal Constitution, made in Troy, or in Schenectady, or in Buffalo. Take another classification, that a license fee should be required for dealers in all goods made by machinery or all goods made by hand. If such classification be valid and if the purpose of the act, as is claimed, is to protect free labor from prison labor, why, in these days of contest between organized and unorganized labor, should not an act be passed which provided for such a license for selling all goods made in a shop which did not employ union labor and then, if the advocates of a free shop were in power, repeal it and provide for such license for all goods made in shops which employed union labor, or single out for license dealers in goods made in shops employing members of certain races, religious or political parties. All these classifications would be based on origin, as is that under consideration.

In People ex rel. Hatch *v.* Reardon (184 N. Y., 431, affirmed 204 U. S., 152) the court of appeals had under consideration the stock transfer act, chapter 241 of the laws of 1905, and held that a tax of 2 cents on each $100 of face value or fraction thereof of stock certificates was valid. Many cases in the courts of this State and of the Supreme Court of the United States were there considered.

In People ex rel. Farrington *v.* Mensching (187 N. Y., 8), the court held, chapter 414 of the Laws of 1906, amending the stock-transfer act so as to make the 2-cent tax applicable to each share, no matter what its face value might be, unconstitutional. The court said: "We adhere without qualification to the decision made when the act of 1905 was before us and broadly indorse the reasons given to support the judgment then rendered." (People ex rel. Hatch *v.* Reardon, 184 N. Y., 431.) We held that "the legislature has power to classify as it sees fit by imposing a heavy burden on one class of property and no burden at all upon others," provided "all persons and property in the same class are treated alike," and "the tax is imposed equally upon all property of the class to which it belongs." In discussing the subject we said that: "While a tax upon a particular house or horse, or the houses or horses of a particular man, or on the sale thereof would obviously invade a constitutional right, still a tax upon all houses, leaving barns and business buildings untaxed, or upon all horses or the sale thereof, leaving sheep and cows untaxed, however unwise, would be within the power of the legislature. * * * The equal protection of the laws only requires the same means and methods to be applied impartially to all the constituents of each class, so that the laws shall operate equally and uniformly upon all persons in similar circumstances. (Kentucky Railroad Tax cases, 115 U. S. 321, 337.) Or, in other words, all persons must 'be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' (Magoun *v.* Illinois Trust & Savings Bank, 170 U. S., 283, 293; Hayes *v.* Missouri, 120 U. S., 68; Barbier *v.* Connolly, 113 U. S., 27, 32.) * * * The act now before us does not classify by arranging according to quality, but by arranging according to accident. While it places all corporate shares in a class, still it does not treat all members of the class alike, but without method or order bears heavily upon some and lightly upon others, which, in effect, is a further classification. * * * While the legislature has wide latitude in classifications its power in that regard is not without limitation, for the classification must have some basis, reasonable or unreasonable, other than mere accident, whim, or caprice. There must be some support of taste, policy, difference of situation, or the like, some reason for it, even if it is a poor one.

"While the State can tax some occupations and omit others, can it tax only such members of a calling as have blue eyes or black hair? We have said that it could tax horses and leave sheep untaxed, but it does not follow that it could tax white horses

and omit all others, or tax the sale of certificates printed on white paper and not those on yellow or brown. While one class may be made of horses and another of sheep, or even a class made of race horses, owing to the use made of them, without a shock to common sense, a classification limited to white horses would be so arbitrary as to amount to tyranny, because there would be no semblance of reason for it."

It does not seem necessary to add anything to these felicitous illustrations of improper classification. A classification by origin, applied to a vast variety of goods, seems to be more unreasonable than any enumerated by the court of appeals. So that, if we should hold that this statute does not violate the interstate-commerce clause of the Federal Constitution, and does not, under the guise of a licensing act, practically prohibit the buying and selling within this State of goods, wares, and merchandise produced in another State, and look at it solely as a revenue act, we are forced to the conclusion that it is an unconstitutional exercise of legislative power and hence invalid.

It follows that the order appealed from should be affirmed.

All concur.

I wish now to discuss the merits of the bill. I understand that very often bad cases or hard cases make bad laws, and very properly the question arises, Is this question of convict-made goods a bad case in fact? There has been much general talk upon its effect, and those who understand the subject best and have made a most thorough investigation extending over a period of years have declared that the effect is greatly overestimated. Regarding the question of competition with outside labor, President Amos W. Butler in his address before the American Prison Association in Washington, D. C., in 1910 said:

> The extent of the competition of convict labor is usually overestimated.

And in this address he quoted the late Carroll D. Wright, distinguished as Chief of the United States Bureau of Statistics, who said:

> In the many investigations which it has been my privilege to make in relation to the prison-labor question I have found few instances where prices have been affected in the least, and never a case where wages have been lowered as a consequence of the employment of convicts on productive industries.

It was at that time estimated that the percentage of prison labor to free labor was one-tenth of 1 per cent, and if that was the proper proportion at that time it is not at the present time one one-hundredth of 1 per cent. I said before that the agitation of this legislation had done more to restrict the competition than the passage of the law itself would do, as I believe that after the law has been passed and declared unconstitutional that the gates will be opened, and I have often said to clients that is probably the better way to end the whole matter, but their answer is always obvious: "But meanwhile we shall be ruined; we must pay the price and we are unwilling to do it."

This agitation has worked both ends against the middle. It has in many States made these contracts unpopular. It has seemed to create an additional hazard, in consequence of which the State has suffered. There have been fewer men in the past years willing to take these contracts, because of the hazards, in consequence of which the amount paid has been less. It is notable that in the States which seem to be more secure from this labor agitation the penal institutions have been able to get the largest prices for their men. I need only refer to the State of West Virginia and to the State of Kentucky, and I might refer to others. The effect of this agitation has been to force out many very desirable industries, industries that able-bodied men should be employed at, but which require very large outlay in the way of machinery equipment and raw materials, and to admit more

simple industries, industries easily installed, in consequence of which the shirt industries and all industries that are of that type have had a very considerable increase. Recently there has been a cry that this sort of competition is especially serious because it is in competition with women's work. But this was especially answered at the hearing in 1910 before the subcommittee of the Committee of Labor in the House in a statement made by Mr. Goodman and Mr. Blazer, active owners of the Reliance Manufacturing Co. and the Sterling Manufacturing Co. In that statement they showed that the number of people in all the institutions employed in these industries was not over 2,000, whereas there were over 100,000 machines in the country; that their industries did not create even 1 per cent of the product. They showed that many great concerns in the State of New York had more operators than could be counted in all the institutions. They showed that there was at that time a demand all over the country for female help in these institutions; that the demand could not be supplied, and that all kinds of inducements and advertisements were being resorted to. That condition prevailed at that time; it prevails to-day. Here is a report from the National Convention of Clothiers and Designers, regarding the condition of the shirt industry in the city of Baltimore, showing its tremendous growth. Here is another from Fon du Lac, Wis., showing that in the last 16 years a company in that city has paid in dividends 144 per cent. Messrs. Goodman and Blazer, in their report included letters from cities where they had wished to install free factories, which they were told were not wanted, as it would be an interference with the female help in that city.

I am speaking of that industry because it has been the most cited as being the most sinning party. It has been reported in hearings before Congress that one great industry has been driven out of the penitentiaries altogether. I refer to the hollow-ware industry. I have before me a statement made by Michael L. Horner, president of the Jones Hollow Ware Co., published in the Baltimore American of Saturday, June 1, 1912, in which he shows that, contrary to the accepted report, there were no free hollow-ware industries anywhere in the United States.

Senator BRANDEGEE. What is "hollow ware"; crockery, dishes, etc.?

Mr. BOYLE. All kinds of ironwork, such as old iron kettles in which to make soap.

Senator BRANDEGEE. Pots and kettles?

Mr. BOYLE. Yes, sir. I will refer Mr. Horner's statement to the committee and ask that it be printed in the record.

(The statement referred to is as follows:)

EXHIBIT C.

REPLY OF JONES HOLLOW WARE CO. TO STATEMENTS PUBLISHED IN THE BALTIMORE NEWS REGARDING CONTRACT LABOR IN THE MARYLAND PENITENTIARY.

The Baltimore News has published a statement concerning the Maryland Penitentiary four times consecutively. If allowed to go uncontradicted, some of the people might believe it. As the representative of the Jones Hollow Ware Co., the oldest contractor in the Maryland Penitentiary, I will answer:

The Jones Hollow Ware Co. pays to the State $1,480 per year rent; it pays $150 per year water rent; it paid in 1911 $1,080 for light; it buys $6,000 worth of coal per year,

and generates all its own power; it paid in the year 1911 $13,266.26 to prisoners on its contract for voluntary overwork.

The manufacture of hollow ware is not confined to prisons. Some of the outside concerns making hollow ware which I can recall at present are:

Marietta Hollow Ware & Enameling Co., Marietta, Pa.
Marietta Casting Co., Marietta, Pa.
Griswold Manufacturing Co., Erie, Pa.
Favorite Stove & Range Co., Piqua, Ohio.
Wagner Manufacturing Co., Sidney, Ohio.
Phillips & Buttorff Manufacturing Co., Nashville, Tenn. (Formerly hollow ware contractors in the Nashville (Tenn.) Prison, and now manufacturing outside.)
Lodge Manufacturing Co., South Pittsburg, Tenn.
D. H. Sperry & Co., Batavia, Ill.
Rome Stove Works, Rome, Ga.
Southern Cooperative Foundry Co., Rome, Ga.
Sanford & Day Iron Works, Knoxville, Tenn.
Chattanooga Roofing & Foundry Co., Chattanooga, Tenn.
Chattanooga Plow Works, Chattanooga, Tenn.

But if the manufacture of cast-iron hollow ware were confined to prisons, it is as absurd to say the molder would not be competent to work in any other foundry as it would be to say a bricklayer whose work had been laying brick for dwellings could not lay brick for a warehouse. The difference in molding hollow ware and any other cast-iron article is simply a change of pattern, the principle of molding being the same. An inmate of the penitentiary who has worked at molding in the Jones Hollow Ware foundry is competent, so far as skill is concerned, to hold his job in any other foundry; and it is a fact that there are molders in the Jones Hollow Ware Co. foundry who have earned for overwork as high as $70 in a month. Mr. Leavitt and Lyman Beecher Stowe to the contrary notwithstanding.

The News says Mr. Leavitt is a Russian. Is it not strange it has not suggested itself to Mr. Leavitt that there would be a field in his own country for prison reform, as it is a notorious fact that the prison system of Russia is not the most humane on the face of the earth? In my estimation it is as ridiculous to bring a Russian to Maryland to reform our prison system as it would be to bring a man from the wilds of Africa to teach at the Johns Hopkins University or a medicine man from an Indian tribe to lecture at the great hospitals of Baltimore on surgery. And it is worse than presumptuous for The News to intimate that the members of all the grand juries for the last 20 years and all the boards of directors of the Maryland Penitentiary have been either fools or knaves, and that The News, with the help of Mr. Leavitt, will remedy the wrong done the people.

Charles Dickens was a true reformer, and we frequently meet with people who remind us of characters delineated by him. A reference to Mr. Creakle's system in chapter 61 of David Copperfield might remind one of this present fad of prison reform represented by The News and Mr. Leavitt. Bill Sykes, Uriah Heep, and Fagin can always be found in the Maryland Penitentiary, performing the only honest labor they have ever done.

MICHAEL T. HORNER,
President of the Jones Hollow Ware Co.

P. S.—To verify this statement I invite any bank president or bank cashier in the State of Maryland, or a committee appointed by the Baltimore Clearing House, or a committee appointed by the Medical and Chirurgical Faculty of Maryland, or a committee appointed by the heads of any religious denominations in Baltimore to examine the books and vouchers of the Jones Hollow Ware Co. The Jones Hollow Ware Co. will pay for the publication of the report.

Mr. BOYLE. The labor people have not always been the most active proponents of this legislation. Very often rich and prosperous manufacturers have been the most active in their support and very often associations of manufacturers have been the most active.

The CHAIRMAN. Upon what theory?

Mr. BOYLE. I can not give their real theory. They have always presented it on the theory that this convict labor competition was ruinous to their business. I have believed that very often the real theory has been because the goods made in the penitentiaries were coming in contact with prices which had been fixed by women. I

believe that there are at the present time great industries in this country that are known to be trusts, that are known to control prices that will profit by this legislation. I can refer in particular to the International Harvester Co. That will certainly profit by this legislation, as it will eliminate the competition of the States in the binder twine. I can appreciate that it is especially important to them at the present time, as one of the great States in the middle West is now contemplating the making of farming machinery, and as another State is at the present time installing a great binder-twine plant.

Senator BRANDEGEE. In its prisons, do you mean, to be worked by convict labor?

Mr. BOYLE. To be worked by convict labor. I refer in this particular to the State prison at Waupun, Wis.

I now wish to discuss briefly the constitutionality of this proposed law, and in this connection I believe we can simplify the discussion by reference and render it unnecessary to make any academic discussion of all those laws pertaining to this sort of legislation. I refer to the liquor laws, the lottery cases, the game laws, the pure food and drug acts, the slaughterhouse cases, and the other cases, of course, which have shown the proper restriction and interpretation to be put upon those cases.

The CHAIRMAN. Have you written a brief on the question of the constitutionality of the proposed law?

Mr. BOYLE. I have heretofore written a brief. I wrote a brief on the subject in 1908, as it appeared before the subcommittee.

The CHAIRMAN. Could you not submit that to the reporter and then give us whatever additional argument you have?

Mr. BOYLE. I can do so. I did not intend to use this. I did not intend to open it even.

Senator BRANDEGEE. Have you appeared before the Senate committee before on this matter?

Mr. BOYLE. I have never appeared before a Senate committee. This is my first opportunity. It is probably proper to explain how I came into this work. In 1906 a similar bill was before the Judiciary Committee. It was known that I knew much of the prison-labor question and of the conditions of the prisons and reformatories of the country, and I was requested by a superintendent at that time to assist him in making a statement which he handed to his Senator. That statement attracted some attention, and although I did it, I appeared the first time freely, and because of my interest in the subject I have become active as an attorney opposing this legislation.

Senator BRANDEGEE. What I was trying to get at was if there were any printed hearings before Senate committees on this or similar bills?

Mr. BOYLE. I think there is none. I wish to refer first, however, to Document No. 146, Sixty-first Congress, first session.

Senator BRANDEGEE. Is that a House document?

Mr. BOYLE. No; a Senate document. This is a document presented by Mr. Clark, of Wyoming, chairman of this committee, in which intoxicating liquor laws were discussed and considered and in which much of the law that is applicable to this bill was discussed.

Senator BRANDEGEE. What is the document; a hearing before a Senate committee?

Mr. BOYLE. A hearing before a subcommittee. I wish to refer especially to the discussion on the subject on page 9 giving Mr. Knox's views on the subject and his conclusions in the matter.

The CHAIRMAN. The views of Mr. Knox as contained in the document will be inserted in the record and the discussion referred to will be particularly printed in italics.

EXHIBIT D.

VIEWS OF MR. KNOX, RELATIVE TO THE CONSTITUTIONALITY OF BILLS TO REGULATE INTERSTATE COMMERCE IN INTOXICATING LIQUORS.

The committee has had under consideration Senate bill 749, introduced by Mr. Clay on December 4, 1907; Senate bill 2926, introduced by Mr. Tillman on December 18, 1907; Senate bill 3069, introduced by Mr. Dolliver on January 7, 1908; Senate bill 3634, introduced by Mr. Frazier on January 13, 1908; Senate bill 4087, introduced by Mr. Hansbrough on January 16, 1908; Senate bill 5151, introduced by Mr. Bacon on February 10, 1908; and Senate bill 5745, introduced by Mr. Overman on February 26, 1908.

While these bills differ somewhat in detail, expression, and scope, their fundamental purpose is the same; that is, to subject fermented, distilled, and other intoxicating liquors transported into any State or Territory for delivery therein, or remaining therein for use, consumption, sale, or storage, to the police powers of the State immediately upon arrival within the boundary of the State before and after delivery in the same manner as though such articles had been produced in the State. The Bacon bill provides that State power shall attach at the place to which the goods are consigned, but before delivery to the consignee.

The object of this legislation is stated by Senator Bacon on page 11 of the Record in these words: "Of course we know the object of this legislation is to prevent the shipment of liquor from one State to another"—that is, by permitting the States to so legislate.

Senator Tillman, on page 12, expresses the object to be accomplished in these words:

"The object is to permit the States in the exercise of their police power, where they pass laws which forbid its (liquor) entry, to have the right to have their laws carried out."

Rev. S. E. Nicholson, legislative superintendent of the Anti-Saloon League, states the object in these words:

"I think the Anti-Saloon League movement is insistent; that, if it can be done, the interstate liquors shall be put exactly on the same basis as domestic liquors, that they shall have the same character from the time they enter the State, and that the State may have full control under the police power of the State, to exercise such control as the State may see fit. (P. 52.)"

Mrs. Stevens, president of the National Woman's Christian Temperance Union, states (p. 123) that the organization she represents wants "a law which will permit the officer to seize liquor as soon as it reaches its destination."

Mr. Baker, general superintendent of the Anti-Saloon League, says what is needed to reach the situation is power to "seize and destroy the liquor before it gets into the hands of the consignee, because that destroys the motive power behind it for sending it." (Record, p. 115.)

To accomplish these objects it is evident that Congress itself must so regulate commerce among the States as to exclude liquors from commerce as it has excluded lottery tickets, or enable the States to so regulate such commerce as "to prevent shipments of liquor from one State to another," as Senator Bacon puts it, or "forbid its entry," as expressed by Senator Tillman, and to permit "its seizure and destruction before it reaches the consignee," as suggested by Mr. Baker. The bills we are considering propose to accomplish these objects by turning over to the States the control of interstate shipments and not through the direct action of Congress.

Regardless of all other aspects, the paramount question before this committee is one of constitutional law.

Both the friends and enemies of these bills demand above all else that we dispose of them in accordance with the requirements of the Constitution, and in justice to both sides as well as to ourselves we should not lose sight of the scope of our own authority or the nature of the Federal power invoked.

Mr. Alvord, attorney for the antisaloon interests, said:

"So I think that naturally this committee will be inclined to give us relief, if it has the power, and thinks it has. I do not ask it to do anything that is unconstitutional. I am not asking it to take a gamble on what the Federal courts will say. I should say this, however: If the committee were equally divided on the question, some thinking it constitutional and others thinking it unconstitutional, the necessities of the situation are such that perhaps they ought to take some little chances on it. But I do not believe, as the chairman of the House Judiciary Committee said this morning, that just to please somebody you ought to shove up propositions to the Supreme Court which you believe in your conscience and under your oath to be unconstitutional."

Through the measures we are considering Congress is not asked to directly act upon the use or traffic in liquors by excluding liquors from commerce, but to surrender to the States the regulative power to do so.

Of course, the real purpose of this and all other movements of kindred character is to prevent the use of strong drink as a beverage. Liquors would not be produced and there would be no commerce in them if they were not consumed. The restriction of consumption is the real, ultimate object of all the people back of all antiliquor movements.

The whole subject of the use of liquors is within the exclusive power of the States. The Federal Government has nothing to do with it and can have nothing to do with it except incidentally and indirectly in connection with commerce in liquor among the States, and then only upon the theory that they are legitimate subjects of interstate commerce.

The States have attempted to restrict the use of liquors in two ways, and two only. First, by prohibiting their manufacture; second, by prohibiting their sale. The States have not attempted to restrict the use of liquors by prohibiting their use.

Upon this subject, Mr. O'Brien, representing the National Prohibition Society, said:

"There is not a State I know of that has attempted to pass an act denying the use of intoxicating liquors to its citizens, except to certain classes of citizens that come under their police regulations. They do not attempt to deny the use of intoxicating liquors."

The Rev. Mr. Fulton, secretary of the permanent committee on temperance of the Presbyterian Church, tells us:

"The church has given official deliverances that it is a matter of discipline for any member to sell intoxicating beverages or to rent property for that purpose or to engage in the manufacture of it. * * *

"The church has not yet made the use of liquor a matter of discipline, although the principle of the church is for total abstinence. We have never made it a matter of discipline for anyone to take his glass of liquor, but the principle of the church is for total abstinence and a legal suppression of the traffic. That is our position on the question" (p. 127).

Along both lines of State effort to restrict the consumption of liquors the States have been upheld and assisted by the Federal power. The Federal Supreme Court has sustained the right of the States to constitutionally strike down the production of liquors within their borders and the Federal Congress has removed from liquors imported into a State the incidental right of sale in original packages. Not only does the Wilson law enable the States to prohibit the sale of liquors imported from other States, but it enables the States to prohibit solicitation within their borders of orders for liquors to be shipped from other States.

Not a single drop of liquor can be manufactured, sold, or used under Federal protection in any State of this Union that has prohibited it. If in any State liquors are manufactured, sold, or used in any way contrary to its laws, that fact does not disclose a lack of State power to prevent it. It discloses a lack of State vigilance and efficiency in dealing with a matter every phase of which is under its exclusive control.

Notwithstanding laws against the manufacture and sale of liquors in the States, and probably because there is no law against it, the use of liquors still continues.

Now, what is proposed? Is it legislation by the States having exclusive jurisdiction of the use of liquors directly aimed at the use? Not at all. Upon the contrary, these bills propose legislation indirectly aimed at the use by Congress, which has no jurisdiction over the subject of the use and has already relinquished its jurisdiction over the subject of sale. If these bills are not to be effective against the use of liquors, they have no real, beneficent purpose, as Congress has already legislated against the sale of liquors in the States in the only way it could by subjecting importations to all the laws of the States governing the traffic and the States have not undertaken to control anything but the traffic.

This brings us to the main question.

Can Congress surrender its exclusive control over interstate commerce in legitimate articles of commerce the possession and use of which are lawful under the laws of the States where sold and bought before they are delivered to the consignee?

Before undertaking to answer the primary question of the power of Congress to redelegate to any State an exclusive power delegated to it by the people, let us inquire how, if at all, the question is affected by the fact that none of the States have outlawed the use or possession for use of the articles now sought to be excluded from the channels of interstate commerce by the indirect action of the States; and whether, if the States generally did outlaw the use of liquors, Congress itself would still be the only power that could effect the exclusion now sought through State action.

The avowed purpose of the legislation proposed by these bills is to give the States authority to prevent the shipment of intoxicants from one State to another by seizing them under the authority of State laws before they reach the consignee, whether they are imported for sale in violation of the laws of the State or for personal use, which is not a violation of the laws of the State.

The effect of such a law would be to regulate, if not to destroy, the right of a citizen of one State to purchase these articles for his own use in another State, as the right to a delivery of goods to the purchaser is essential to the contract of sale and is essential to commerce in its fundamental sense.

If citizens of a State may lawfully use these articles and may lawfully have them in their possession for personal use, why should the National Government be asked to permit their transportation to be so interfered with as to prevent their delivery, even if it could constitutionally enact such a law?

The attempt to get Federal authority to seize shipments of liquors before they reach the consignee by States which have not made the consignees' use and possession of them unlawful is an attempt to accomplish indirectly through Federal legislation what no State has undertaken directly to accomplish.

Will it not be time enough for the States to ask for the power to destroy commerce between States in respect of any article when the use of that article is denied by the States? Congress did not prohibit commerce in lottery tickets until the States had legislated against them and Congress itself had denied to them and their advertisements the privileges of the United States mails. These bills propose a plan to prevent the use of liquor through a regulation of interstate commerce by States that have no power over such commerce, permitted to do so by a nation that has no jurisdiction over such use.

The Nation is not asked to supplement any action of the States prohibiting the use of liquors, but to allow the States to prevent the use, not by legislating against it, but by seizing importations before they reach the consignee. A more complete perversion and reversing of National and State powers I can not imagine.

"So long as the State legislation continues to recognize wines, beer, and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of the Federal courts to afford such use and commerce the same measure of protection under the Constitution and laws of the United States as is given to other articles." (Scott *v.* McDonald, 165 U. S., 91.)

As I have pointed out heretofore, to the full extent that the States have refused to longer recognize liquors as lawful articles of commerce by prohibiting traffic therein the United States has promptly supplemented their action by so regulating commerce as to remit to the States the whole subject of traffic within their borders. When the States cease to recognize the use of liquors as lawful it will be time to consider our duty to deny them the privileges of interstate commerce at all, as has been done in the case of the lotteries.

Can Congress delegate its power to regulate commerce to the States, as proposed? This is the fundamental question.

The essential character of the act of stopping, interfering with, or seizing an article of interstate commerce before it reaches the consignee is a regulation of commerce. This is exactly what the court said it was in Rhodes *v.* Iowa and what it said no State can do, because to do so is to violate the Constitution of the United States, which vests in Congress exclusive power to make commercial regulations.

The Wilson Act, giving the State full control over imported liquors after they reach the consignee, is no precedent for the law proposed by these bills. Under that act the States can not regulate commerce among the States. A State law which denies to its own citizens the right to sell articles in their possession is simply an exercise of the State's undoubted power, which, prior to the Wilson Act, was suspended as to goods from other States in original packages, because of the incidental right of sale appertaining to importations.

The court said, in re Rahrer, the Wilson law "imparted no power to the State not then possessed." The proposed law attempts to impart a power never possessed. No State ever possessed the power to pass a law to break an interstate contract or to destroy goods shipped from one State to another when the use and possession were lawful in both States.

This is clear when you consider the nature of the two powers. One affects the distribution of an article throughout the body of the State by sale and delivery to others after the interstate contract of purchase and sale has been consummated by delivery of the goods to the consignee.

The State power over liquors in the hands of consignees who had imported them was unshackled by the Wilson Act, which was a regulation of commerce, removing the impediment to the complete exercise of State power, the impediment being the incidental right to sell. The effect of the removal of this impediment was not to permit the State to invade the Federal domain by acts which in their nature and essence are acts regulating commerce, such as by seizing goods in transit, but to enable the States to freely exercise their proper powers to regulate their own internal affairs after the interstate contract had been completed by a delivery of the goods to the consignee and after title had passed. To remove a barrier which prevented States from acting freely in their own domain is quite another matter than removing a barrier that will let them in on the Federal domain.

The court said in Bowman *v.* Railway Co. (125 U. S., 465–498):

"It may be said, however, that the right of the State to restrict or prohibit sales of intoxicating liquor within its limits, conceded to exist as a part of its police power, implies the right to prohibit its importation, because the latter is necessary to the effectual exercise of the former. The argument is that a prohibition of the sale can not be made effective except by preventing the introduction of the subject of the sale; that if its entrance into the State is permitted the traffic in it can not be suppressed. But the right to prohibit sales, so far as conceded to the States, arises only after the act of transportation has terminated, because the sales which the State may forbid are of things within its jurisdiction. Its power over them does not begin to operate until they are brought within the territorial limits which circumscribe it. It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence, for if they belong to one State they belong to all and can not be exercised severally and independently. The attempt would necessarily produce that conflict and confusion which it was the very purpose of the Constitution by its delegations of national power to prevent."

The Supreme Court also said in Rhodes *v.* Iowa (170 U. S., 424):

"Whilst it is true that the right to sell free from State interference interstate-commerce merchandise was held in Leisy *v.* Hardin to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State.

"On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State."

It has been suggested that if a constitutional act could be passed turning over to the States control of all imported liquors upon their arrival within State lines, except such as were imported for personal use, it might be of some assistance to the States in breaking up illegal traffic in liquors, but that is a mistake.

Congressional expression in favor of personal use would be an expression upon a subject with which Congress has nothing to do and upon it all sorts of confusing questions would arise. The same evidence required to defeat the claim of importation for personal use would give the State the right to follow up and seize the goods under any existing State law covering the subject.

There are some constitutional questions closed beyond dispute. One is that Congress can neither add to nor take from the police power of the States. I think no one can seriously question the proposition that as the law now stands, under the decisions of the court, it is not within the police power of the State now to prevent the delivery to the consignee of an article purchased by him in another State, and if the passage of an act, such as proposed in these bills, would enable the States to interrupt interstate shipments it could scarcely be denied that the additional power was given to the States by act of Congress. In other words, the police power of the States would be extended by an act of Congress, which is a constitutional absurdity.

I believe it is within the police power of the States to legislate against all devices resorted to by shippers and carriers whereby liquors are distributed to other than bona fide consignees. Kansas has an excellent statute upon this subject. I am likewise of the opinion that Congress, by legislation acting directly upon carriers, can prevent them from becoming agents for vendors in other States in collecting for liquors upon delivery and will gladly support a bill covering that field.

My conclusions are:

First. Interstate shipments are not completed until they reach the consignee.

Second. An interruption or interference with interstate shipments before they reach the consignee constitutes a regulation of commerce.

Third. Regulating interstate shipments is an exclusive function of Congress.

Fourth. Congress can not delegate any part of its exclusive power to the States.

Fifth. To remove the bar or impediment of exclusive Federal power which shuts the States out of the Federal domain and thereby allows them to enter that domain is to permit or sanction a State law in violation of the Constitution and in effect to delegate a Federal function to the States.

For these and other reasons assigned, I am constrained to vote against the bills we have been considering.

P. C. KNOX.

We are fortunate, furthermore, in having had hearings on intoxicating liquor laws before a subcommittee of this Judiciary Committee this year. I find them in four parts. I find parts one, three, and four especially valuable in connection with this discussion. I assume that the members of this committee will read these hearings also as members of the Judiciary Committee, in which case it will also be unnecessary for me to quote from them. I find in that discussion that without regard to whether the speakers were proponents of this legislation or against this legislation, when asked the question by Senator Nelson, Senator Borah, Senator Bacon, and others, whether it would be the same—that is, the laws would be the same, or the effect would be the same—if the subject matter were wheat or clothing, instead of intoxicating liquors, without exception they have answered, no, it would not; a different rule would prevail.

Mr. Dinwiddie, who does not proclaim himself a lawyer, but who is nevertheless very familiar with the laws governing the subject, says:

I do not believe Congress could go so far as to stop the transportation of breadstuffs and other articles that go through the channels of interstate commerce which are wholesome and make for the material and moral welfare of the country. I believe such an attempt would come up against the provision of the Constitution guaranteeing certain rights which we inherently possess. Even those rights are subject to control and regulation, but when it comes to saying to a man that he shall not transport through the channels of interstate commerce an article which confessedly makes for the comfort and happiness of the people, I think legislation of that kind would probably fail. But in the first place such legislation will probably never get to the courts, because Congress is not going to be foolish enough to pass legislation of that kind. In the first place, we can rest upon the proposition that Congress will always exercise common sense and the discretion that the Chief Justice said they would exercise. I think that statement is in the case of Gibben *v.* Ogden, found in 9 Wheaton.

Senator BRANDEGEE. I would be inclined to differ with him on that.

Mr. BOYLE. These discussions here are especially important because it is attempted to model this bill after the Wilson bill, and have it considered constitutional for the same reasons that the Wilson bill was considered constitutional.

Mr. Webb, who is one of the proponents of this liquor legislation, in part three, on page 86, says:

There is a difference under the laws of this land between liquor and other commodities, like wheat and corn, because every man has an inherent right to raise wheat and corn and to make flour.

I am passing over these very rapidly. In the fourth part are very able discussions by both Mr. Maxwell and Mr. Caldwell, Mr. Caldwell being a proponent for the legislation, in which they make the distinctions clear, as will appear on the several pages of this fourth part.

The conclusion of all the discussion which has gone before the Judiciary Committee may be said to be practically this: That there are three parties to this contract which we call the Constitution—the Federal Government, the States, and the people. The Federal Government, through the exercise of its power over interstate commerce, has very broad and extensive power; has plenary power which it may exercise at will, providing, however, it does not in any way interfere with any of the other terms in the contract—that is, providing it does not interfere with the police powers of the State on the one hand, or with the constitutional guaranties of the people on the other hand, the guaranties of life, liberty, and property. Upon this theory Congress has exercised its power over interstate commerce, not only to regulate, but to absolutely prohibit in the case of lottery tickets, and that exercise has been declared constitutional, because the people have no inherent rights in that subject matter. Congress has exercised its power in the matter of game laws, because it has recognized a qualified right of the State in the wild game of the State, and that although the hunter may reduce that to possession he has, nevertheless a qualified ownership in it. Congress can no doubt, in my mind exercise a complete power over the intoxicating liquors, because of the nature of intoxicating liquors. Congress and the States can exercise a power over all matters that pertain to the health, peace, and morals of the people, and over all matters that pertain to the general welfare of the people to the extent of preventing at all times fraud and oppression. But when Congress departs to the extent that it interferes with a man's liberty in life and in property it is violating one of the terms of the agreement.

In short, the people have no inherent rights in things that are clearly affecting the peace, the morals, and the health of the people, or in any way that makes for fraud and oppression, but the people have their inherent rights in the ordinary articles of merchandise, innocent in their nature. We hope that it is unconstitutional for Congress in the slightest degree to in any way discriminate or distinguish between goods innocent in their nature because of the source of their origin. I shall not be heard to say that Congress could not pass a law declaring that all goods and merchandise shall upon being delivered to the consignee of the State be subject to the laws of the State in the exercise of its police power, but when you discriminate against goods of identical character with other goods, because of the source of origin, for the purpose of limiting competition, however desirable it may be, you are not regulating interstate commerce, you are not protecting the people in their health, their morals, their peace, and from fraud or oppression, as it is constitutionally known. You are protecting one class of people from competition of another class, and, coming to the policy of this legislation, if this is constitutional legislation, then there is no limit to this kind of discrimination. A law may follow just as truly which will provide that all goods made by nonunion labor shall be subject to the laws of the State as soon as delivered to the consignee regardless of whether in original packages or otherwise. You can declare that all goods made by a certain individual shall be so subjected; and so you can continue your discrimination.

Senator BRANDEGEE. Do you claim that the effect on these prison-made goods with respect to their interstate-commerce character as

roposed by this legislation is not an attempt to regulate commerce ut is really an attempt to prohibit convicts from working and their roducts from being transported?

Mr. BOYLE. In result, yes. It is the real effect, and the courts are lear upon that. It does not make any difference what the language f the law may be, the question is what is its effect in operation? he effect will be that you will absolutely, by a boycotting result, lo exactly what you set out to do if you pass this legislation—prevent ll competition.

Senator BRANDEGEE. The Beveridge child-labor bill proceeded pon the theory that it attempted to prohibit the transportation rom one State into another of goods upon which any child less than certain age had been permitted to labor, and that always seemed o me to be an attempt not to regulate commerce but to prohibit hild labor.

Mr. BOYLE. And the Judiciary Committee so declared that it was ot an attempt to regulate commerce; and here we agree that the urpose of this bill was to prevent competition, and we have a long ne of decisions, both in State and Federal courts, declaring all bills hich attempted to in any way limit competition unconstitutional, ecause contrary to constitutional guaranties. We find that when-ver any legislation is attempted of that sort we are against the con-titutional guaranties as we know them in the fifth article of the mendment and the fourteenth article of the amendment.

Senator BRANDEGEE. Sometimes the questions are pretty close, owever?

Mr. BOYLE. I appreciate that. I see I have only a few minutes ft; but there is another question which I have no doubt has occurred o you. You are not only discriminating against the goods innocent n their nature because of the source of their origin, but you are pro-osing to discriminate against the States. I believe that there is a rther constitutional objection to this legislation. We know that e Constitution guarantees to every State a republican form of overnment. We recognize the sovereignty of the Federal Govern-ent and of the respective States within their respective sphere. We cognize that the States have all the function of government that e Federal Government does, and we must recognize that the work-g of the prisoners of the States, who are its wards, and the produc-g of useful merchandise is one of the judicial functions of the State; et here you are proposing to discriminate against the State's prop-rty without regard to whether the State has sent it into another arket or whether it has sold it to another, or what is known as the ison contractor. It is still the State's property. The laws regard-g the attempt to tax the obligations of the Nation and of the State e altogether too familiar to you to need to be stated here, in which ws it has been declared over and over again that the State can not x these bonds of the Federal Government and that the Federal overnment can not tax obligations of the States; that the power tax means the power to destroy. If that is good law in that con-ection, it applies equally well to this sort of legislation. It has been eclared, as you know, that the judicial processes of the State can t be taxed, yet here is one of the judicial processes of the State nd you are proposing to discriminate against it.

Senator BRANDEGEE. I do not quite see that. How is the determination of whether the State shall work its convicts or not a judicial process?

Mr. BOYLE. I take it that is under the judicial department.

Senator BRANDEGEE. I should think it was a question for the legislature to determine.

Mr. BOYLE. It may be or it may not be. It depends upon the constitution of the State. The judge very often sentences a man to 10 years of hard labor.

Senator BRANDEGEE. He is simply carrying out the law.

Mr. BOYLE. He is carrying out the law, yet he is carrying it out as the court. I know that our own penitentiaries in the Federal Government are under your judicial department, so it seems but natural, if we were to draw a parallel, that we should say they were under the judicial department of the States.

We are proceeding on an improper theory when we hold that a State in any commercial way should be confined within its State boundaries. If there is one way in which we are national, according to the Constitution, it is commercially. Commercially, we know no State boundaries. The State of New York is not more entitled to the great market of New York City than the adjoining States. The State of Illinois is no more entitled to the great jobbing center of Chicago than adjoining States are, which States have contributed to the upbuilding of that center.

I wish in addition to what has gone before, to offer as a citation a case entitled "Oklahoma *v.* Kansas Natural Gas Company," found in 221 United States Reports, page 229, in which the whole question of the power of the Federal Government and of the States in relation to interstate commerce is fully discussed.

Now I wish to come briefly to the law recently passed in New York, of which I am leaving a copy. The history of that legislation is this: That in New York a branding law was passed, and in what is known as the Hawkins case (The People *v.* Hawkins, 157 N. Y., 1) Judge O'Brien held that the law was unconstitutional, as every court in every other State has, because it was against the constitutional guaranties to the people; and he also held because it was contrary to interstate commerce, with which the other judges agreed. The State of New York then said we will pass a law which will clearly be within the police power of the State and entirely independent of the interstate commerce law; we will provide that anyone dealing in convict-made goods shall have to get out a license, paying a considerable sum and making elaborate reports, and we will put it on the ground of taxation. That came before the court, as I have heretofore stated, and a decision was had. I am going to leave the entire case with the committee.

The CHAIRMAN. It can go into the record.

Mr. BOYLE. The result of this decision is that if this law were passed and the States undertook to take any advantage of it on the ground that such legislation was in favor of competition or against the constitutional guaranties they would, I feel sure, be declared unconstitutional as soon as they could be brought before the court.

Thereupon, at 12 o'clock noon, the subcommittee adjourned to meet at the call of the chairman.

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